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ABSTRACT

This study examined legal writing as it was represented in legal memoranda prepared by first-semester law students at 12 different law schools. The study was based on the cumulative judgments of the instructors and professors of law in those institutions, humanities specialists at the Educational Testing Service, and two legal consultants. A taxonomy of the elements of the legal memorandum was developed from annotations and written and tape-recorded commentaries on 237 legal memoranda written by the law students. Ratings of the overall quality of the importance of specific elements of the legal memoranda were conducted on multiple occasions by different judges. Statistical analyses of the rating data revealed some disagreement among legal writing instructors with respect of the overall quality of the legal memoranda and with respect to the elements that were strong or weak. Despite these disagreements, it was possible to determine in the aggregate the elements of the legal memoranda that were most important and the relative weight each had in the judgments of the instructors and professors. It was also possible to identify combinations of elements that formed factors important in determining the quality of legal memoranda. Computer analyses of the memoranda indicate differences between thestudent memoranda and other kinds of writing, particularly with respect to the greater use of passive voice and nominalizations in the student memoranda, but the computer variables did not correlate significantly with global quality ratings of the memoranda. Although no significant sex differences were found in the global quality ratings, differences favoring females were observed for several taxonomy elements. Five appendixes contain forms used in the study, the taxonomy of elements, and sample memoranda. (Contains 21 tables and 57 references.) (Author/SLD)

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Defining Legal Writing: An Empirical Analysis of the Legal Memorandum

Hunter M. Breland
Frederick M. Hart

Law School Admission Council
Research Report 93-06
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Defining Legal Writing:
An Empirical Analysis of the Legal Memorandum

ABSTRACT

This report examines legal writing as it is represented in legal memoranda prepared by first-semester law students in twelve different law schools. It is based on the cumulative judgments of the instructors and professors of law in those institutions, humanities specialists at Educational Testing Service, and two legal consultants. A taxonomy of the elements of the legal memorandum was developed from annotations and written and tape-recorded commentaries on 237 legal memoranda written by the law students. Ratings of the overall quality and of the importance of specific elements of the legal memoranda were conducted on multiple occasions by different judges. Statistical analyses of the rating data revealed some disagreement among legal writing instructors with respect to the overall quality of the legal memoranda and with respect to the elements of them that were either strong or weak. Despite these disagreements, it was possible to determine in the aggregate what elements of the legal memoranda were most important and what relative weight each has in the judgments of the instructors and professors. It was also possible to identify combinations of elements that formed factors important in determining the quality of legal memoranda. Computer analyses of the memoranda indicated differences between the student memoranda and other kinds of writing, particularly with respect to the greater use of passive voice and nominalizations in the student memoranda, but the computer variables did not correlate significantly with global quality ratings of the memoranda. Although no significant sex differences were found in the global quality ratings, differences favoring females were observed for several taxonomy elements.

INTRODUCTION

Although legal writing has obviously been around for a long time, law schools have not until relatively recently taught courses in legal writing. Legal writing did not appear as a category in the American Association of Law Schools' *Directory of Teachers in Member Schools* until 1947, and less than 50 years have passed since writing courses were included in the law school curriculum (Carrick & Dunn, 1985). Moreover, the earliest courses were remedial courses focussing on basic writing skills (Rombauer, 1973).

The Growing Interest in Legal Writing

If publications are representative of interest in a field, then interest in legal writing presently is strong and growing. Gopen and Smout (1990) listed 95 books and 361 articles on the topic published between 1960 and 1990. Of the books, 22 percent were published before 1970, 21 percent in the 1970s, and 57 percent in the 1980s. Of the articles, 19 percent were published before 1960, 14 percent in the 1960s, 23 percent in the 1970s, and 44 percent in the 1980s. Clearly, the 1980s was a period of great growth in the profession of legal writing as evidenced by publications. The interest appears to be continuing into the 1990s. For example, one leading law school publisher introduced two new books on legal writing in 1990 (Neumann, 1990; Calleros, 1990). At least three new journals have appeared: The American Society of Writers on Legal Subjects (Scribes) began publishing *The Scribes Journal of Legal Writing* (first published in 1990), the Legal Writing Institute (LWI) began publishing *The Journal of the Legal Writing Institute* (first published in 1991), and West Publishing Co. began publishing *Perspectives: Teaching Legal Research and Writing* (first published in 1992). Finally, "substantive" law reviews are now beginning to publish articles in the field of legal writing (see, e.g., Fajans & Falk, 1993, an article about critical reading theory and upper-year writing courses).

The increase in publications may be related to increasing concerns among groups of teachers of legal writing, such as the Legal Writing Institute. The Legal Writing Institute was established in 1984 after manifestations of unrest because of high turnover among legal research and writing professionals, low pay, and difficulties in obtaining tenured status in law schools. Courses were often graded pass-fail and course credit units were low, resulting in low student interest (Shapo, 1986). Turnover in the profession has always been and still is high. Fifty-five percent of full-time professionals made less than $30,000 per year in 1990 (Ramsfield, 1991). The Legal Writing Institute's purpose is to unite legal research and writing professionals intellectually, to share resources, and to monitor and encourage the development of effective courses across the United States and Canada.

Criticism of Legal Writing

The increased interest in legal writing in recent years has been stimulated by numerous complaints about the quality of legal writing (see, e.g., Besharov & Hartle, 1985; Gale, 1980; Graham, 1983; Hazard, 1982). Some criticisms are attacks on "legalese," and call for the use of "plain English." Other criticisms are broader in scope. In the late 1970s, the Committee of Bar Examiners of the State of California came under attack by partners in the large law firms across the state. These partners had observed that law graduates who had passed the bar exam "could not prepare a memo that accurately summarized how the findings from a search of the legal literature related to their client's case." (Klein, 1989). Since these firms did not hire marginal graduates, but only the most able, it was clear that the problem was a pervasive one and not limited to basic English skills. A recent study of the relationship between legal education and the practice of law, listed "communication" as a necessary legal skill. The study concluded that, among other things, a lawyer must be able to organize a presentation, express ideas with precision,

clarity, logic and economy, use appropriate terminology, apply the mechanics of language, and attend to detail (American Bar Association, 1992, p. 173).

Books on Legal Writing

One way to trace the development of legal writing as a profession is to examine textbooks used in legal writing courses over the years. Carrick and Dunn (1985) conducted such an examination over the years up until the time of their article. They note that Cooper's *Effective Legal Writing* (Cooper, 1953) was one of the first books devoted solely to legal writing. This book assumed a reasonable knowledge of English grammar and focussed on the drafting of various types of legal documents. Although some in the field viewed this book as the best available source of instruction in legal writing, others found fault with it and it was never widely accepted.

The first book to receive widespread acceptance was Weihofen's *Legal Writing Style* (Wiehofen, 1961). This book instructed in composition in ordinary written English and then addressed specific types of legal writing including letters, opinions, memoranda, and briefs. It became the assigned text in about seventy law schools, and a second edition was published twenty years later (Wiehofen, 1980). Carrick and Dunn describe the book as practical, with specific rules to follow for clear, strong writing. Another book of about the same era, Brand and White's *Legal Writing: The Strategy of Persuasion* (Brand & White, 1976), was also intended primarily to help students express ideas clearly and effectively.

Although of the same period as the Wiehofen and Brand and White texts, a course book authored by Rombauer, *Legal Analysis and Research* (Rombauer, 1970), suggested a fundamental change in approach to instruction in legal writing. As the title indicates, legal analysis and research are the emphasis; writing is not mentioned at all. The second edition of this book, published in 1973, was entitled, *Legal Problem Solving: Analysis, Research, and Writing*, and has retained that title in two subsequent editions of this book (Rombauer, 1978, 1983). The emphasis on problem solving and analysis, and the subordination of research and writing, signalled a departure from the basic skills approach that had been prominent in legal writing up until that time. Another book of this type was Statsky and Wernet's *Case Analysis and Fundamentals of Legal Writing* (Statsky & Wernet, 1977, 1984), which also emphasized problem solving; it was the first book to integrate legal cases into a text for legal writing and analysis.

A number of books published since 1980 also integrate legal writing with legal analysis, but some still emphasize primarily grammar, style, and mechanics. Block's *Effective Legal Writing: A Style Book for Law Students and Lawyers* (Block, 1981) is described by Carrick and Dunn (1985) as a "technical study of grammar with rules, guidelines, and exercises," although it includes a brief discussion of the IRAC (issue, rule, analysis, and conclusion) method. Dernbach and Singleton's *A Practical Guide to Legal Writing* (Dernbach & Singleton, 1981), emphasizes practice in case and statutory analysis and trains the student to identify facts, holdings, and issues. Many exercises are included. Gopen's *Writing from a Legal Perspective* (Gopen, 1981) stresses basic writing problems (grammar and style) in the first half and covers the types of writing that lawyers do in the second half. Mellinkoff's *Legal Writing: Sense and Nonsense* (Mellinkoff, 1982) is a critical review of legal writing and is typical of scathing portrayals of current legal writing, according to Carrick and Dunn, and emphasizes precision, clarity, and conciseness. Squires and Rombauer's *Legal Writing in a Nutshell* (Squires & Rombauer, 1982) stresses organization, sentence structure, grammar, and punctuation. It includes a glossary of words often misused, and covers various types of legal writing.

Carrick and Dunn conclude their 1985 review by observing that many of the books overemphasize basic grammar, topics that are handled better in English composition books. None of the books they reviewed effectively combined legal research with legal writing. In their view, Dernbach and Singleton (1981) and Mellinkoff (1982) best balanced grammar and rules of composition with their practical application to legal situations and thus represented the best texts available at that time (1985) for basic legal writing courses.

Other books on legal writing have appeared since the Carrick and Dunn review. Calleros's *Legal Method in Writing* begins with four chapters devoted to legal reasoning before tackling writing style (Calleros, 1990). Neumann's *Legal Reasoning and Legal Writing: Structure, Strategy, and Style* contains substantial material on working with rules, skills for using precedent, and statutory analysis (Neumann, 1990). Shapo et al's *Writing and Analysis in the Law* (Shapo et al., 1991) contains thirteen chapters and five appendixes; only three chapters and one appendix deal primarily with composition and grammar. Pratt's *Legal Writing: A Systematic Approach* (Pratt, 1990) also emphasizes legal topics; very little attention is given to standard English composition rules, although there is some discussion of active/passive voice. Tepley's *Legal Writing, Analysis, and Oral Argument* (Tepley, 1990) belongs in this group as well because it is mostly about legal analysis and research, although it is described as a "self-teaching text," rather than as a coursebook.

Other coursebooks published since 1985 have a distinctly different nature. Charrow and Erhardt's *Clear and Effective Legal Writing* (Charrow & Erhardt, 1986) contains much about clarity, sentence structure, audience, the writing process, etc.; there is no mention of legal analysis *per se*, even though there is some brief discussion of application of law to facts, rule identification, and consideration of counterarguments. Porter et al.'s *Introduction to Legal Writing and Oral Advocacy* begins by describing the various types of legal writing and then concentrates on organization, sentence structure, active voice, quotations, punctuation, etc. There is little discussion of legal analysis. Gilmer's *Legal Research, Writing, and Advocacy: A Sourcebook for Students, Lawyers, and Paralegals* (Gilmer, 1987) is unique with its heavy emphasis on research and library work, nothing on English composition, and little on legal analysis. The book probably reflects Gilmer's many years of work as a law librarian.

A final group of recent books on legal writing are distinguished in part because they are not coursebooks and in part because they tend to emphasize English composition more than legal topics. Ray and Ramsfield's *Legal Writing: Getting It Right and Getting It Written* (Ray & Ramsfield, 1987) is a desktop reference for legal writers designed to be a companion to the Harvard *Uniform System of Citation*. The alphabetical list of topics contains some legal terms, which are described, and some topics on the writing process (such as how to get started with a legal writing task), but most of the topics are standard English composition topics. Katz's *Winning Words: A Guide to Persuasive Writing for Lawyers* (Katz, 1986) begins with a discussion of style and proceeds to emphasize brevity, simplicity, sentence structure, grammar, and active voice. It contains many examples of the various types of legal writing, and some discussion of analysis, but nothing on the structure of the law, the courts, etc. Good's *Mightier Than the Sword: Powerful Writing in the Legal Profession* (Good, 1989) represents an extreme among the more recent books in that it is *entirely* about English composition.

Of the books published since Carrick and Dunn's 1985 review, the coursebooks appear to continue a trend toward more legal analysis and less English composition. No such trend is apparent in other than coursebooks. Few books of any type, however, accept Carrick and Dunn's suggestion that English composition is best left to English books.

Law School Admissions and Writing Skill

The Law School Admission Test (LSAT) has long addressed the question of applicants' writing skills. In the early 1950s a study was conducted of possible tests of legal writing ability (Coffman & Papachristou, 1955) and in 1954 five items designed to measure writing ability were administered on an experimental basis (Olsen, 1956), and the value of writing items as a predictor of law school grades was first investigated in 1962. The motivations for introducing a test of writing ability were (Pitcher, 1962, p. 204):

(1) Since the ability to write is very important to the law student and to the practicing lawyer, some evidence of proficiency in writing might be useful in helping to determine the admissibility of law school applicants.

(2) The presence of a test of writing ability in the LSAT battery might help to encourage pre-law students to prepare themselves in writing during their undergraduate careers.

A machine-scoreable writing ability test was introduced in 1962. It was scored and reported separately on a 20 to 80 scale. Pitcher's prediction that the writing ability items would not add much to prediction of first year grades when combined with the LSAT and undergraduate grade-point average proved to be correct (Pitcher, 1965). Some schools used the writing ability score as a third predictor in the regression equation predicting law school grades, but it never added much, and fluctuations were common (Schrader, 1976). Some believed that the writing ability score was of assistance in the assessment of minority candidates for law school, but a study showed that this was not true (Powers, 1980).

In 1980, the Law School Admission Council Board of Trustees voted to eliminate the writing ability items and the writing ability score. At the same time, the Board voted to include an unscored written writing sample. Two reasons for the inclusion of the writing sample were given: (1) it would inform candidates that law schools believe writing to be important, and (2) it would provide a means for allowing law schools to make an independent judgment as to an applicant's writing skills (Law School Admission Council, 1980, p. 61).

The writing sample was introduced in 1982, and it has continued as a part of the administration ever since. Two issues have recurred in connection with the writing sample: (1) the proper format of the stimulus and (2) whether it should be scored. The first issue was addressed in 1985, and is again under consideration. The second issue has been debated periodically, with those who favor scoring arguing that the writing sample is little used without scoring, and those opposed to scoring arguing that the score would not add to prediction of law school grades and would, therefore, be misleading.

One of the areas selected for research by the LSAT Test Development Committee is legal writing. The ultimate aim is to develop a method of determining with some degree of precision the ability of law school applicants to succeed in the many aspects of legal training that require writing. Initially, the question arises as to what is meant by "legal writing."

The Nature of Legal Writing

Early discussions among members of the Law School Admission Council, Law School Admission Services, and Educational Testing Service focussed on this question of the nature of legal writing. How does it differ from other kinds of writing? Is there something unique in "thinking like a lawyer" that carries over into legal writing and makes it unique? There seemed to be no clear answer to such

questions, because there appeared to be considerable disagreement within the legal profession about just what constitutes legal writing. Consider the following statements:

> A thorough understanding of the legal problem-solving process is of little value . . . unless the analysis can be communicated on paper. Good legal writing is essentially the same as good writing in general.
> [Dernbach and Singleton (1981), p. xvii]

> Basically, the kind of writing required for (legal) assignments is just a variation of persuasive prose. The skill to write law examinations, memoranda, and briefs, since the basics are not peculiar to law, can be taught--and can be taught even by those who are not lawyers.
> [White & Brand (1976), p. 41]

> The ability to write an organized, persuasive argument is in no way peculiar or special to the legal profession. It follows that law teachers are no better and indeed perhaps less equipped to teach writing skills than would be those persons in the university who approach that task as their specialty.
> [Pedrick, in Pedrick et al. (1982), p. 414.]

Compare the above statements with these:

> Of all the current verities in the legal writing instructors' lounge, none is embraced more passionately than the idea that by teaching legal writing one is teaching, and improving, fundamental "legal thinking" skills and processes. Where, legal writing teachers will argue, does genuine legal thinking and analysis occur more intensively than during the research and writing process?
> [Stratman, 1990, p. 153]

> The problem with legal writing is not that there are too many "herein-befores" and not enough metaphors. The problem is that lawyers cannot write clearly unless they can think clearly, unless they can recognize and construct a convincing legal argument--unless, in other words, they understand the structure of the law.
> [Hyland, 1986, p. 621, quoted in Gopen, 1987, p. 353]

> Legal reasoning and legal writing are taught together in this text because the reasoning and writing processes are so inseparable that one cannot fully be taught without the other. For several years now, legal writing teachers have known that writing is better learned when combined with at least some instruction in legal reasoning. [Neumann, 1990, p. xix]

> [T]echniques of expression are closely linked to the underlying substantive analysis; indeed, problems in writing style often betray confusion in the analysis.
> [Calleros, 1990, p. xxiii]

Evolution of the Project

The general consensus that there was disagreement in the law teaching profession about just what constitutes legal writing and how it differs or does not differ from other types of writing, led to the idea of conducting a project that would begin to define what legal writing entails. The project desired would

preferably be objective and empirical because of the disagreement within the legal profession. Objectivity would require project direction outside of the legal profession. An Advisory Committee of legal writing experts would be needed, however, to guide the project, with a liaison from LSAC to attend meetings and thus reflect LSAC interests.

In considering ways to approach the problem empirically, it seemed advisable to consider past efforts where attempts had been made to define other types of writing empirically. There had been a significant research investigation at Educational Testing Service in the early 1960s in which a large amount of data had been collected and analyzed to examine schools of thought in judging excellence in English themes. This study, Diederich, French, and Carlton (1961) began with 300 brief essays written as homework by college freshmen. To obtain a wide range of judgment on the quality and specific characteristics of these essays, readers were selected from a assortment of fields of specialty: English teachers, social scientists, natural scientists, writers or editors, lawyers, and business executives. These readers were asked to use their own judgment about what constitutes "writing ability." They were instructed to sort the 300 essays into nine different piles of merit and, additionally, to write comments on the papers as to why they liked or disliked them. The results of this exercise revealed much disagreement among the readers as to which essays were the best and worst and what specifically was good or bad about them. No essay received less than five different grades, and 101 of the 300 essays received *all* nine different grades.

This study of English essays, published later in a condensed form by French (1962), examined 50,000 comments totalling 155,000 words to identify 55 categories of comments. Despite disagreements among the various judges, it was still possible to derive meaning from the data. To do so, the 55 categories of comments were subjected to a statistical technique called factor analysis to determine which tended to go together to form what might be called schools of thought, transcending the various professions, as to what English composition ability is. The results revealed five factors labelled as follows: IDEAS, FORM, FLAVOR, MECHANICS, and WORDING. IDEAS was related to quantity of ideas and clarity of ideas, FORM to organization and coherence, FLAVOR to style and originality, MECHANICS to punctuation, grammar, and sentence structure, and WORDING to word choices, cliches, and slang.

After discussion of this study with representatives of the Law School Admission Council, Law School Admission Services, and Educational Testing Service researchers, it was decided that a similar study of legal writing would be useful. The objective of this study would be to determine what factors legal writing instructors believe important in good legal writing. The approach would be to have law school teachers of writing "grade" papers prepared by students in actual classes. The overall grade given to a paper would be of less importance than the comments instructors wrote on the papers during the grading process. Through these comments, refined with the assistance of the Advisory Committee, a taxonomy of legal writing could be developed. The taxonomy, in effect, discloses those qualities of law school writing assignments that were of importance to the graders. By having the graders rate the extent to which a paper successfully demonstrated a particular quality, it would be possible to draw some conclusions about the importance of that quality in comparison with other qualities.

Legal writing assignments in law school vary significantly. Students may have to write legal memoranda, appellate briefs, letters to clients or to opposing lawyers, legislation, contracts, wills, etc. It is at least arguable that different skills are required for each type of legal writing. There is also a difference in the expertise expected of students depending upon the amount of legal education that they have had at the time the writing assignment is undertaken. It was decided that first semester legal memoranda would be the focus of this study. Most, if not all, law schools have a legal writing course or program in the first semester, and most use the legal memorandum for one or more of the exercises.

DESCRIPTION OF THE STUDY

The Advisory Committee was formed in the summer and early fall of 1991, and the first meeting was held in October. It was decided at that meeting that from 10 to 15 law schools should participate in a study of student samples of legal memoranda written during the first semester of law school. Each law school would be asked to supply twenty writing samples representing a range of the abilities of students in each law school. The possibility of using a common assignment was considered but rejected because it would not provide a range of assignments and because it would require long-range planning. In rejecting the use of a common question, it was recognized that agreement between graders of the same paper would suffer because it is more likely that graders would have a more common framework if they were all rating papers responding to the same assignment. However, since consistency among raters was not anticipated, it was decided that the reasons for using different assignments were more convincing.

Following that meeting, Advisory Committee members contacted a number of law schools to determine which might be interested in participating and ultimately a total of 12 schools were identified. Within each institution, an instructor was designated to obtain student consent for participation in a study, to collect writing samples, to rate the samples with respect to overall quality, and provide detailed commentaries on the samples. Although students could be identified by their instructors, they would remain anonymous to the Advisory Committee and to those at Educational Testing Service. Additionally, the ratings of writing samples conducted by instructors would be kept confidential; only Educational Testing Service, where ratings would be tallied, would have information linking specific participating instructors with specific ratings. Summary analyses of the ratings would be conducted, however.

Collection of Writing Samples

Data collection began in the fall of 1991 with the collection of 237 student legal memoranda from 12 different law schools. These law schools were diverse with respect to geographical location, type, and student selectivity. Instructors and professors rated the samples with respect to overall quality and provided detailed commentaries in the form of annotations and written and tape-recorded commentaries.

With the exception of one institution where the student samples used were written in the spring of 1991, all legal writing samples were written in the fall 1991 semester of the first year of law school. The samples were all typewritten and varied in length (double-spaced) between 5 and 15 pages. The samples were responses to a variety of assignments, each unique to the institution from which it came, but they were similar in that they were all legal memoranda written in response to similar assignments. Participating professors obtained student consent for use of their writing samples by means of the consent statement given in Appendix A. In addition to annotated copies of the memoranda, unmarked copies were made for use in obtaining ratings from other legal writing instructors and professors.

Taxonomy Development

The writing samples and commentaries were sent to Educational Testing Service where humanities specialists and legal consultants developed an initial draft taxonomy of elements of the legal memorandum. The taxonomy development began by engaging two legal consultants in the task of reading the 237 samples collected, listening to tape recordings of instructor comments, reading instructor annotations and written comments, and categorizing the comments made. One of the legal consultants was a retired lawyer with membership in both the New York and New Jersey bars; the other was a recent law school graduate.

Once an initial draft taxonomy was formulated, the samples and commentaries were next analyzed by humanities specialists at Educational Testing Service. The humanities specialists concentrated on those

aspects of the taxonomy concerned with English composition. A revision of the draft taxonomy was then made and distributed to members of the Advisory Committee on Legal Writing for comment. Comments from the Advisory Committee resulted in two revisions of the taxonomy, the final version of which is included in this report as Appendix B.

Ratings of the Samples

An initial global rating on a 1 (low) to 6 (high) scale was obtained from the instructors who collected the writing samples. A second global rating, as well as a first set of taxonomy element ratings, was obtained by sending clean, unmarked, copies of the samples to instructors participating in the study in institutions other than those where the samples were collected along with a taxonomy element rating form. A third set of global ratings was obtained from the legal consultants, although they did not rate the taxonomy elements. A fourth set of global ratings and a second set of taxonomy ratings was obtained by sending clean, unmarked copies of the samples to a third legal writing instructor participating in the study who had not previously seen the samples along with taxonomy element rating forms. The rating forms used for these ratings are included in this report as Appendix C, along with the instructions for their use. Minor changes in the rating forms were made between the first and second taxonomy ratings.

Scores for taxonomy elements were developed by coding the responses as follows:

Extremely strong element (++) = 5
Strong element (+) = 4
Blank = 3
Weak element (-) = 2
Extremely weak element (--) = 1

The two sets of taxonomy element ratings provided by legal writing professors were then summed to produce taxonomy element scores. These scores could thus range from a high of 10 to a low of 2.

Analyses Conducted

A number of analyses of the ratings obtained were conducted to examine frequency distributions of the ratings, reliability of the ratings, what elements of the taxonomy were most frequently viewed as positive or negative, relationships among elements of the taxonomy, relationships between elements of the taxonomy and global ratings of the samples, and the underlying structure of the elements of the legal memorandum.

Correlational statistics were computed to examine relationships among variables and regression analyses to determine what elements contributed most significantly to the global ratings. A series of factor analyses were conducted. Exploratory factor analyses including principal component analyses and oblique rotations (specifically OBLIMIN) assuming different numbers of factors were conducted to identify initial factors solutions. See Harman (1967, pp. 324-334) for details of OBLIMIN solutions. The initial factor solutions were then followed by confirmatory factor analyses to arrive at a best fitting model using programs developed by Bentler (1989).

Computer analyses of the sampled memoranda were conducted using Writer's Workbench software. These analyses produced 73 variables for each memorandum including number of words written, readability indexes, average sentence length, average word length, percentage of simple sentences, percentage of complex sentences, percentage of compound sentences, percentage of compound-complex sentences, percentage of "to be" verbs, percentage of passive verbs, and percentage of nominalizations.

These Workbench variables were correlated with the global quality rating of the memoranda made by legal writing instructors. The means and standard deviations of Workbench variables obtained for the legal memoranda were also compared with those obtained for other kinds of English composition, including expository essays and periodical text.

Finally, sex differences were analyzed for global quality ratings, taxonomy element ratings, and Workbench variables. Analyses of ethnic differences were not possible because of the small sample size.

RESULTS OF DATA ANALYSES

As previously described, global ratings were made of the sampled legal memoranda on four different occasions. The first global rating was made by the legal writing instructors who provided the samples, the second by legal writing instructors in institutions different from those where the samples originated, the third by legal consultants engaged by Educational Testing Service, and the fourth by instructors of legal writing in institutions different from those where the samples originated and who had not seen the samples rated previously. Table 1 shows frequency distributions obtained from the four sets of ratings, labelled Score 1, Score 2, Score 3, and Score 4. Of special interest in Table 1 is the degree to which raters used the entire range of the score scale. Score 1, provided by the originating professors, had a greater percentage of "1" and "6" ratings than the other three scores, suggesting a greater confidence in rating at the extremes. Score 2, by contrast, had the lowest percentage of scores at the extremes and, consequently, more scores bunched in the mid-range.

Score 3, provided by the legal consultants, is similar to Score 4, both with an intermediate percentage of scores at the extremes and in the mid-range. Note that Score 3 was assigned to only 236 samples, while the other scores were assigned to all 237 samples. The reason for the difference in numbers rated is that one of the samples was of poor legibility and for that reason the legal consultants chose not to provide a rating for it.

Table 1. Frequency Distributions of Global Scores

Global Score	Value	Frequency	Percent
Score 1	1	32	13.5
	2	46	19.4
	3	40	16.9
	4	47	19.8
	5	42	17.7
	6	30	12.7
Total		237	100.0
Score 2	1	18	7.6
	2	46	19.4
	3	63	26.6
	4	63	26.6
	5	32	13.5
	6	15	6.3
Total		237	100.0
Score 3	1	23	9.7
	2	36	15.3
	3	61	25.8
	4	48	20.3
	5	45	19.1
	6	23	9.7
Total		236	100.0
Score 4	1	21	8.9
	2	49	20.7
	3	50	21.1
	4	55	23.2
	5	40	16.9
	6	22	9.3
Total		237	100.0

Note:

Score 1 was assigned by the professor or instructor who provided the sample.
Score 2 was assigned by a professor or instructor of legal writing in an institution other than that where the sample originated.
Score 3 was assigned by a legal consultant.
Score 4 was assigned by a professor or instructor of legal writing in an institution other than that where the sample originated but who had not previously seen the sample.

Table 2 shows the frequency distribution of global scores when all four scores were summed. Since each score had a range from 1 to 6, the range of the summed score is 4 to 24.

Table 2. Frequency Distribution of Global Score Sum

Value	Frequency	Percent
4	3	1.3
5	1	.4
6	7	3.0
7	8	3.4
8	12	5.1
9	10	4.2
10	16	6.8
11	17	7.2
12	21	8.9
13	17	7.2
14	19	8.1
15	16	6.8
16	21	8.9
17	19	8.1
18	9	3.8
19	19	8.1
20	9	3.8
21	5	2.1
22	4	1.7
23	2	.8
24	1*	.4
Total	236	100.0

*The single memorandum receiving the maximum score from all four readers is included in this report as an exemplar in Appendix D, along with the assignment to which it responds and instructor commentary.

Rater Consistency

Table 3 presents an analysis of global score discrepancies for different rating pairs. The number and percentage of global score discrepancies at different levels of absolute values are shown. For example, in the first row of figures it can be seen that four ratings (2 percent) differed by as much as five points (on the 1 to 6 scale) between the first global rating and the fourth global rating. In the second row of figures in Table 3, it is seen that the first and fourth ratings differed 11 times out of 237 pairs (5 percent) by four points on the 1 to 6 scale. The last row of figures in Table 3 shows the number of times that perfect agreement occurred between ratings. The second and third global ratings (DIFF23), for example, agreed perfectly for 74 memoranda, or 31 percent.

Table 3. Global Score Discrepancies: Absolute Values of Differences for Global Ratings

Score Difference*	Number and Percentage for Score Pairs					
	DIFF12 N = 237	DIFF13 N = 236	DIFF14 N = 237	DIFF23 N = 236	DIFF24 N = 237	DIFF34 N = 236
5	0	1	4 (2%)	0	0	1
4	4 (2%)	6 (3%)	11 (5%)	5 (2%)	2 (1%)	5 (2%)
3.5	0	0	0	1	0	0
3	19 (8%)	21 (9%)	24 (10%)	23 (10%)	30 (13%)	18 (8%)
2.5	1	1	1	1	0	0
2	66 (28%)	58 (25%)	46 (19%)	45 (19%)	39 (16%)	62 (26%)
1.5	2 (1%)	0	0	0	3 (1%)	0
1	90 (38%)	102 (43%)	95 (40%)	86 (36%)	98 (41%)	95 (40%)
0.5	1	0	1	1	1	1
0	54 (23%)	47 (20%)	55 (23%)	74 (31%)	64 (27%)	54 (23%)

*Score differences with fractions resulted because some raters made fractional ratings.

Abbreviations:

DIFF12 = First global score vs. second global score
DIFF13 = First global score vs. third global score (legal consultants)
DIFF14 = First global score vs. fourth global score
DIFF23 = Second global score vs. third global score (legal consultants)
DIFF24 = Second global score vs. fourth global score
DIFF34 = Third global score (legal consultants) vs. fourth global score

These discrepancies and agreements indicate no systematic differences between the legal writing professors and the legal consultants. In fact, the greatest differences occurred between the legal writing professors who provided the first global rating and those who provided the fourth. Table 3 shows that a total of 174 rating pairs out of a total of 1419 differed by three points or more, or 12 percent. Among the professors of legal writing, there were 94 differences of three or more scale points out of 711 score pairs, or 13 percent. Score pairs involving a legal writing professor and a legal consultant had 81 differences of three or more out of a total of 708 score pairs, or 11 percent.

These rating inconsistencies are similar to those observed by French (1962) of English composition class essays on which the present investigation was modelled. As noted earlier, in that study, 300 expository essays were rated on a nine-point scale and 101 of the essays received all nine possible scores; no paper received less than five different grades. Inconsistencies were expected in the model study, as well as in the present study, because of previous research of this type. Slightly more inconsistency than

has been usually observed would be expected, however, because in both studies readers were not convened in a conference setting so that rating standards could be discussed and agreed upon. For the present study, additional factors that contributed to inconsistencies include:

1. Only those instructors who provided the legal memoranda samples were intimately familiar with the law involved in the memoranda. Other instructors were provided with the same materials as the students who wrote the memoranda and achieved further information from the 20 or so memoranda that they read, but instructors who provided the samples had in some cases used the same assignment for several years.

2. There was inconsistency in the weighting attached to specific elements of the memoranda. For example, some instructors weighted the legal analysis heavily while others perhaps expected less legal skill from first-semester law students and thus weighted traditional English composition considerations more heavily.

Table 4 gives comparisons of score discrepancies for individual readers. Recall that there were 12 legal writing instructors and two legal consultants who read and scored the samples. In Table 4, the readers have been given code numbers from 1 to 14. All comparisons in the table are based on scores assigned to the same set of legal memoranda. Most readers read three sets of 20 legal memoranda, each set from a different institution, although two of the readers read two sets one reader read four sets. The Average Difference, the second column in Table 4, was determined by computing each reader's average for a set, computing the difference between each reader's average for a set and the overall reader average for that set, and then averaging the differences obtained over all sets scored by a given reader. The second column in Table 4, Percent Discrepant, represents the percentage of times a reader's score differed from another reader's score by three or more points. Thus a "discrepant score" is viewed as one with three or more points difference with another reader of the same sample. The final column of Table 4, Percent High, was determined by computing the proportion of discrepant scores where an individual reader was "high" in comparison with the other reader. The "Average r" is the average correlation between a reader and other readers who read the same memoranda.

The individual readers are ranked in Table 4 with respect to their estimated leniency, or tendency to score high. Reader #1, with an Average Difference of +.42 was clearly the most lenient by these estimates. But while Reader #1's Percent Discrepant of 12 percent was not the highest, this reader was "high" in *all* (100 percent) large discrepancies with other readers. At the other extreme in Table 4, Reader #14 was least lenient (or most strict) with an Average Difference of -.40 and only 32 percent of discrepant scores higher than the paired reader (or 68 percent lower discrepant scores).

The average correlations in Table 4 indicate the level of agreement with other readers, but these correlations are influenced to some degree by the particular memoranda that different readers rated. Reader #12 had the highest average correlation (.56) and readers #1 and #11 tied for second place (r = .54). Reader #14 also agreed relatively well with other readers (r = .51). Readers #8 and #9 had the lowest average agreement with other readers.

Table 4. Global Score Comparisons for Individual Readers

Reader #	Average Difference	Percent Discrepant	Percent High	Average r
1	+.42	12	100	.54
2	+.34	12	80	.30
3	+.21	10	50	.34
4	+.14	10	68	.37
5	+.04	9	53	.45
6	+.04	10	58	.40
7	-.01	10	41	.39
8	-.05	15	41	.23
9	-.09	15	52	.26
10	-.13	12	41	.33
11	-.15	12	41	.54
12	-.26	8	10	.56
13	-.29	16	29	.32
14	-.40	12	32	.51

Notes:

1. The "Average Difference" was determined by computing each reader's average for a set of legal memoranda, computing the difference between each reader's average for a set and the overall reader average for that set, and then averaging the differences obtained over all sets scored by a given reader. Most readers scored three different sets of 20 memoranda.

2. "Percent Discrepant" is the proportion of paired comparisons where a reader's score was three or more points (on the six-point scale) different from another reader who read the same memorandum.

3. The "Percent High" is the proportion of paired comparisons where a reader's discrepant score was higher than the paired reader's score.

4. The "Average r" is the average correlation between global scores for readers reading the same memoranda.

Table 5 provides comparative information by institution as well as an indication of what emphases specific readers had in their ratings. Emphasis was determined by computing correlations between global scores and taxonomy element ratings within institution. Table 5 shows that the highest correlation between any two readers who provided taxonomy element ratings was between readers #5 and #9 in their evaluations of the memorandum from Institution #5 (r = .84). These two readers both gave heavy emphasis to "Research," "Analysis," "Organization," and "Style." Neither gave any emphasis to "Conclusion" or "Assignment." They were slightly different in their emphasis on "Brief Answer" and "Mechanics." The only large difference in emphasis for readers #5 and #9 was on "Questions Presented," which reader #5 gave heavy emphasis and reader #9 no emphasis. Readers #10 and #12 also agreed substantially in their evaluation of the memorandum from Institution # 1 (r = .75). They both gave either some or heavy emphasis to "Research," "Analysis," "Organization," "Style," and "Mechanics."

Table 5. Reader Comparisons of Taxonomy Category Emphasis

Taxonomy Category	Institution											
	1	2	3	4	5	6	7	8	9	10	11	12
Avg. reader r	.53	.24	.36	.18	.72	.58	.60	.10	.17	.34	.33	.52
Score 2 X Score 4 r	.75	.42	.56	.00	.84	.50	.43	.29	.27	.00	.35	.52
Questions Presented	10	14	8		5	11 14	1	7 13	10	5 8	3	11
Brief Answer	10	14	6	8 13	5 9	11 14		7 13	9		3 6	
Statement of Facts	10	14		8 13	5 9	14	1 3	7 13		5 8		11 1
Research	10 12	2 14	6 8	8 13	5 9	11 14	3	7 13	10	5 8	3 6	1 11
Analysis	10 12	2 14	6 8	8 13	5 9	11 14	1 3	7 13	9	5 8	3 6	1 11
Conclusion	12		6 8	8		11	1 3	13	9	5 8	6	1
Organization	10 12	2 14	6 8	8 13	5 9	11 14	1 3	7 13	9 10	8	3 6	1 11
Style	10 12	2 14	6 8	8 13	5 9	11 14	1 3	7 13	9 10	5 8	3 6	1 11
Mechanics	10 12	14	6 8	8	5 9	11 14	3	7 13		8	3 6	11
Assignment	10		6	8			1	7				

Notes:

1. The "Average reader r" is the overall average correlation between all global scores for an institution.

2. The "Score 2 X Score 4 r" is the correlation of Score 2 and Score 4, or the correlation of global scores for readers who rated taxonomy elements.

3. The figures inside the table are reader numbers. The appearance of a reader number indicates some emphasis on a taxonomy category and a shaded number indicates heavy emphasis.

Table 5 also shows that readers #8 and #13, in evaluating the Institution #5 memorandum, and readers #5 and #8 , in evaluating the Institution #10 memorandum, did not agree at all (r = .00). In both cases, reader #8 gave a heavy emphasis to "Mechanics," while the other reader did not. Additionally, for

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Institution #4, reader #8 gave some emphasis to "Conclusion" and "Assignment," while the other reader did not. Reader #8 also gave heavy emphasis to "Style" in both cases, while the other reader only gave moderate emphasis to "Style." Reader #8 appears to consistently give heavy emphasis to both "Style" and "Mechanics," as suggested also by the Institution #3 evaluations. It is thus seen that one source of difference among readers is a relative emphasis on style and mechanics and less emphasis on research and analysis. These kinds of differences may be associated with teaching patterns; instructors who teach only legal writing courses may differ systematically from instructors who teach primarily substantive legal courses but who also teach legal writing occasionally.

Another source of rating differences suggested by Table 5 is an interaction between reader and institution (or memorandum assignment). For example, the overall average correlation for all readers associated with Institution #8 is only .10. Close examination of the global ratings made for Institution #8 shows that the ratings made by the instructor who collected the samples, and who thus knew the assignment best, correlated negatively with all other ratings. In other words, there was strong disagreement between the evaluations of quality made by the instructor who knew the assignment best and others who rated it. Table 5 indicates that readers #7 and #13 both gave heavy emphasis to "Research," "Analysis," and "Conclusion," and some emphasis to all other categories with the exception of "Assignment." Nevertheless, their correlation of only .29 indicates considerable disagreement on global scores assigned. It may be that there was something about the assignment in Institution #8 that confused readers.

Frequency Analyses of Taxonomy Elements

Of the 53 taxonomy elements identified for the legal memorandum, which elements are most often rated either positively or negatively by legal writing professors? Table 6 summarizes the results of two different ratings of the 237 legal writing samples by ranking the importance of the elements with respect to the average frequency with which they were rated either positively or negatively by instructors of legal writing. The element most commonly rated either positively or negatively was "Issue and key fact identification." Of the 474 rating forms completed (237 x 2), 81.4 percent contained a mark indicating that this element was perceived positively or negatively in a given sample. The second element most commonly rated either positively or negatively was "Citations (use and form)," with 69.0 percent of forms completed indicating the importance of citations. Four elements followed these first two in frequency: "Legal expression and context," "Relevance of facts stated," "Application of law to facts," and "Transition, flow, and logical continuity." Rounding out the top ten in frequency were: "Authority description and understanding, "Analogy and comparison of facts," "Relationship to questions presented," and "Clarity."

Since the instructions for the rating forms discouraged rating major categories of the taxonomy such as "Discussion" and "Writing," it is not surprising that these major categories were not cited frequently as positive or negative aspects of samples. Subsequent analyses will show, however, that when the major category ratings are combined with the ratings of subelements of those categories, these major categories are indeed important.

Table 6. Elements of the Taxonomy Rated Positively or Negatively Most Frequently

Taxonomy Element	Percentage	Rank
Issue and key fact identification	81.4	1
Citations (use and form)	69.0	2
Adequacy of detail	64.0	3
Legal expression and context	63.7	4
Relevance of facts stated	63.3	5
Application of law to facts	63.0	6
Transition, flow, and logical continuity	61.8	7
Authority description and understanding	58.6	8
Analogy and comparison of facts	58.4	9
Relationship to questions presented	58.4	9
Clarity	57.3	10

Another way of looking at the frequency of taxonomy element ratings is to compare a set of highly-rated memoranda with a set of poorly-rated memoranda. Additionally, if positive and negative ratings are considered separately, a picture of the perceptions of raters emerges. Table 7 presents a comparison of 50 of the best memoranda (those with global composite scores of 18 and above) with 58 of the worst (those with global composite scores of 10 or below).

Table 7 shows that, for the 50 best memoranda, "Application of law to facts" and "Clarity" received the highest positive ratings. "Transition, flow, and logical continuity" was a close third with 44 net score points. Some of the elements have a high percentage of positive ratings, however, because raters had a tendency to rate them positively in many memoranda. "Relevance of facts stated," "Accuracy of facts," "Issue identification," and "Adequacy of detail," for example, received more positive than negative ratings even in the set of 58 worst memoranda. Consequently, positive ratings cannot necessarily be interpreted as meaning that an element was an important influence on the overall quality rating for a memorandum.

Taxonomy elements receiving the most negative ratings in the 58 worst memoranda were "Completeness of explanation," "Analogy and comparison of facts," and "Application of law to facts." The worst memoranda also tended to have more negative ratings for mechanics, with "Grammar and usage" and "Citations" often being viewed negatively. As for the positive ratings, however, there was also a tendency to rate some elements negatively in most memoranda. "Citations," for example, received more negative than positive ratings even in the 50 best memoranda thus indicating that citations did not significantly affect global scores for these memoranda.

Table 7. Comparison of 50 Best and 58 Worst Memoranda

Taxonomy Element	Percent Positive Ratings	Negative Ratings	Net Score
50 Best Memoranda			
Application of law to facts	+46	0	+46
Clarity	+48	-2	+46
Transition, flow, etc.	+46	-2	+44
Relevance of facts stated	+44	-2	+42
Accuracy of facts	+40	0	+40
Use of key facts	+38	0	+38
Authority selection	+40	-2	+38
Introductions and thesis statements	+42	-4	+38
Issue identification	+44	-8	+36
Adequacy of detail	+36	-2	+34
58 Worst Memoranda			
Completeness of explanation	+3	-52	-49
Analogy and comparison of facts	0	-48	-48
Application of law to facts	0	-46	-46
Transition, flow, etc.	+2	-43	-41
Grammar and usage	+2	-41	-39
Citations	+5	-41	-36
Support for statements	+2	-38	-36
Authority description	+2	-38	-36
Clarity	+2	-34	-32
Treatment of counterarguments	+5	-36	-31
Application of rationale	+2	-33	-31

Notes:

1. Percent positive ratings was computed as the percentage of memoranda in the group (Best or Worst) with an element rating of 8 or more.

2. Percent negative ratings was computed as the percentage of memoranda in the group (Best or Worst) with an element rating of 4 or less.

Correlations of Global Scores and Taxonomy Element Scores

Of the elements of the taxonomy, which correlate most with the global quality ratings of the samples? In other words, ignoring the frequency with which elements were rated either positively or negatively, what is the relationship between element scores and global quality ratings. This would seem to be a more important consideration than the simple frequency with which elements were cited, and it avoids the interpretational problems encountered in the above analyses of positive and negative ratings. Two different types of correlations were computed: The first correlation computed was that between the taxonomy element scores and the global ratings made by two legal writing instructors who provided the taxonomy element ratings. This first correlation would be expected to yield the highest figures because all the information involved came from the rating forms. The second correlation computed was that between the taxonomy element scores (provided by two legal writing instructors) and the sum of all global scores (including those made by the instructors who initially provided the samples and those made by the legal consultants). These two correlations were then averaged to arrive at a ranking of the most important correlates of global scores.

Table 8 shows those elements of the taxonomy that correlated highest with the global ratings. The two correlations given, r_1 and r_2, differ because of the global ratings used for each. The first correlation, r_1, is between the taxonomy element scores and the sum of the two global ratings made at the same time as the taxonomy elements were rated (using the rating form). The r_1 correlations tend to be higher because all of the scores being correlated came from the rating form. The second correlation, r_2, involves scores obtained from the rating form as well as scores obtained before the rating form was developed. That is, it involves the global scores assigned by the legal writing professor who collected the sample memoranda and the global scores assigned by the legal consultants. The stronger relationship indicated by the first correlation may have occurred because raters possibly assigned taxonomy element scores that tended to support their global scores.

Table 8. Elements of the Taxonomy That Correlated Highest With the Global Quality Ratings

Taxonomy Element	r_1	r_2
Clarity	.66	.61
Application of law to facts	.66	.58
Transition, flow, and logical continuity	.66	.56
Use of key facts	.58	.56
Authority description and understanding	.59	.51
Analogy and comparison of facts	.55	.53
Completeness of explanation	.57	.46
Organization	.54	.49
Introductions and thesis statements	.55	.47
Authority selection and relevance	.51	.47

Symbols and abbreviations:

r_1 = Correlation between the sum of global scores #2 and #4 and the sum of taxonomy element scores for the same readers

r_2 = Correlation between the sum of all four global scores and the sum of taxonomy element scores

From the perspective of its relationship with the global quality ratings, "Clarity" tended to correlate best with the global ratings followed closely by "Application of law to facts" and "Transition, flow, and logical continuity." This view of importance is very different from that indicated by the frequency analyses, where these same three elements ranked sixth, seventh, and tenth, respectively, in Table 6. The elements ranked highest with respect to frequency do not appear at all in the top ten correlates with global ratings shown in Table 8. Obviously, some elements are often viewed positively or negatively by legal writing professors even though they do not correlate highly with global ratings. "Citations" represents a good example of this phenomenon. Although 69 percent of the samples were rated either positively or negatively on citations, the use and form of citations correlated only .32 with the global ratings and thus would not appear (from the correlations) to be of major importance in determining the global scores for the samples, on average.

Regression Analyses

It was noted earlier that the instructions which accompanied the rating forms discouraged the rating of major categories of the taxonomy. While this procedure was essential for determining the importance of subelements of the taxonomy, the relative importance of major categories of the taxonomy is of interest. Cumulative scores within major categories can be analyzed through multiple regression analysis. Table 9 presents the results of multiple regression analyses when elements of the major categories of the taxonomy are combined. The analyses of Table 9 would indicate that "Discussion" and "Writing" are the most important of the major categories on the rating form. The most important part of "Discussion" is "Analysis," and the most important part of "Writing" is "Organization" (which includes also introductions, flow, paragraphing, and use of headings). The analysis of Table 9 suggest that "Questions Presented," "Brief Answer," "Statement of Facts," and "Conclusion" are less important taxonomy categories.

Table 9. Multiple Correlations of Global Writing Sample Scores and Taxonomy Categories

Taxonomy Category	R_1	R_2
Questions Presented	.40	.39
Brief Answer	.39	.33
Statement of Facts	.34	.34
Discussion	.78	.74
Research	.66	.65
Analysis	.74	.70
Conclusion	.50	.48
Writing	.77	.73
Organization	.71	.66
Style	.68	.66
Mechanics	.52	.52

Notes:

R_1 = Multiple correlation of taxonomy category score and the sum of global scores #2 and #4

R_2 = Multiple correlation of taxonomy category score and all four global ratings

Similar to what was observed in Table 8, the R_1 correlations in Table 9 tend to be higher than the R_2 correlations because the ratings involved all came from the rating form.

Another approach to the multiple regression analysis is to predict the global quality ratings using all taxonomy elements, whether they are major categories or subelements. Many of the elements will be found not to contribute statistically to the prediction because of their similarity (statistically) to other elements. The general approach is to put all of the available predictor variables in the regression, and then to remove those that do not make a unique contribution. Table 10 gives the results of such an analysis in which the sum of global scores 2 and 4 is predicted from the sum of the taxonomy element scores provided by the same readers. Only eleven of the elements are required to maximize the statistical prediction of the global quality ratings. This maximization is represented in the multiple correlation coefficient of .85. Further addition of elements in the regression does not increase the multiple correlation beyond this figure, and thus other elements are not required to maximize the level of prediction possible.

Table 10. Prediction of the Sum of Score 2 and Score 4 Using Taxonomy Element Scores Provided by the Same Readers

Taxonomy Element	Multiple Correlation	Regression Weight	p[1]
Issue and key fact identification	.85	.09	.02
Statement of facts		.08	.03
Authority description		.10	.01
Application of law to facts		.19	<.01
Focus		.09	.03
Conclusion		.15	<.01
Organization		.17	<.01
Transition, flow, and continuity		.16	<.01
Clarity		.16	<.01
Grammar		.09	.04
Punctuation		.11	.01

[1]The probability that an element does not make a statistically significant unique contribution in the prediction.

Of the eleven elements that contribute to the prediction, the greatest weight in the prediction occurred for "Application of law to facts." "Organization," was second in weight, and "Flow" and "Clarity" tied for third place in terms of weight, even though "Conclusion" was a close fourth. This analysis suggests that, rather than rating all of the taxonomy elements, it would be possible to rate only eleven of them and still obtain a good prediction of the global quality ratings. These results have implications for rating forms used in evaluating student legal memoranda. Similar results were obtained when the sum of all four global quality ratings were predicted.

The variables included in Table 10 were those making a statistically significant contribution in the prediction of global scores. Statistical significance does not necessarily mean practical significance, however. Table 11 shows that a reasonably good prediction can be made using only seven taxonomy elements. Removing four variables from the analysis of Table 10 reduces the multiple correlation by only .01, to .84. Thus, it would appear that some of the elements making significant contributions, statistically, in Table 10 do not make a practically significant contribution.

It is of interest to compare Table 11 with Table 8, where the top 10 correlates with the global ratings are listed. Two of the variables making unique contributions in Table 11, "Conclusion" and "Punctuation," do not appear among the top 10 correlates in Table 8. The reason for this apparent inconsistency is that "Conclusion" and "Punctuation" contribute something unique to the prediction of the global ratings that is not represented in the top ten correlates. Since some of the top ten correlates are themselves highly correlated, the top ten correlates would not predict as well as the seven elements of Table 11 because some of the variance would be redundant.

Table 11. Prediction of the Sum of Score 2 and Score 4 Using Only Seven Taxonomy Elements

Taxonomy Element	Multiple Regression	Regression Weight	p[1]
Authority description	.84	.15	<.01
Application of law to facts		.26	<.01
Conclusion		.16	<.01
Organization		.19	<.01
Transition, flow, and continuity		.18	<.01
Clarity		.19	<.01
Punctuation		.15	<.01

[1]The probability that an element does <u>not</u> make a statistically significant unique contribution in the prediction.

Factor Analyses

Unlike multiple regression analysis, where the objective is to exclude variables that do not contribute in the prediction of another variable (such as the global quality rating) the objective of factor analysis is to simplify the description of data. Rather than reducing the number of variables by excluding those that do not contribute in the prediction of another variable, the number of variables is reduced by combining variables that represent some underlying dimension of the data. Although factor analysis was developed initially as a means of identifying psychological traits, it has been improved over the years and applied to a wide variety of behavioral situations. The object is to simplify the description of behavior by reducing the number of categories or variables to a few common factors.

Factor analysis begins with a correlation matrix of all variables that one wishes to explain. In the present study, these variables are the ratings of the elements of the taxonomy. The global quality ratings are excluded, since there is no interest in combining them with the taxonomy elements. The first step in developing common factors from the taxonomy elements was to produce a correlation matrix of 51 taxonomy elements for which two ratings were made. The two ratings were summed to produce 51 composite variables and all of these were then correlated. One rating, "Recommendations for further action," was excluded because it was rated only once. Another rating, "Choice of organizational strategy," was combined with "organization" to produce a single composite variable for organization.

A number of exploratory factor analyses of different types were conducted to determine the optimal number of factors and the variables which belonged best with each factor. Ultimately a six-factor solution was decided to be the best. Table 12 presents the results for this six-factor solution. Factor 1, accounting for the most variance in the data, loads heaviest on " Application of law to facts," "Use of key facts," and "Support for statements," and "Completeness of explanation." This first factor will be called ANALYSIS. The second most prominent factor loads heaviest on "Clarity," "Flow," and "Introductions and thesis statements," but interestingly, it includes "Focus," a taxonomy element originally grouped under "Analysis." This second factor will be called STYLE.

Factor 3 loads most heavily on "Grammar and usage" and "Punctuation," and "Diction," and seems appropriate for a factor name such as "MECHANICS." Factor 4 loads most heavily on "Issues and key fact identification" and seems appropriately named ISSUES. Factor 5 encompasses the elements of "Conclusion," loading mainly on "Reasons." It is labelled CONCLUSION. The sixth factor consists of the elements of "Statement of facts," and will be called FACTS. This labelling, however, should not confuse this factor with facts as represented in ANALYSIS, a much more important factor.

Table 13 shows intercorrelations among the factors. Factors 1 and 2, ANALYSIS and STYLE are quite highly correlated ($r = .77$), as are Factors 2 and 3, STYLE and MECHANICS ($r = .67$). Factors 3 and 5, MECHANICS and CONCLUSION are not correlated at all ($r = -.02$, not significant statistically). Factors 5 and 6, CONCLUSION and FACTS, are not correlated either ($r = .08$, not statistically significant). The remaining factor pairs have intermediate correlations ranging from .20 to .56.

Table 12. Factor Loadings

Taxonomy Element	Loadings for Six Factors					
	1	2	3	4	5	6
Questions Presented				.62		
Issue and key fact identification				.70		
Legal expression and context				.58		
Brief Answer				.59		
Conciseness				.52		
Relationship to Questions Presented				.55		
Statement of Facts						.50
Relevance of facts stated						.53
Accuracy						.82
Adequacy of detail						.59
Objectivity .56						
Discussion						
Issue and subissue description						
Research						
Authority selection and relevance	.60					
Authority description and understanding	.69					
Rule identification						
Analysis						
Application of law to facts	.81					
Application of rationale	.65					
Use of key facts	.79					
Analogy and comparison of facts	.73					
Treatment of distinctions	.54					
Reasoning	.59					
Support for statements	.76					
Completeness of explanation	.75					
Focus		.48				
Conclusion					.46	
Reasons					.83	
Responsiveness to questions presented					.65	
Comprehensiveness and thoroughness					.59	
Writing						
Organization		.62				
Introductions and thesis statements		.75				
Transition, flow, logical continuity		.79				
Paragraphing		.51				
Use of headings and subheadings						
Style		.53				
Clarity		.80				
Avoidance of verbosity		.54				
Sentence control			.47			
Diction (word choice, precision)			.67			
Tone and attitude			.57			
Paraphrasing and use of quotations			.54			
Mechanics			.52			
Citations (use and form)			.50			
Editing and proofreading			.60			
Grammar and usage			.77			
Punctuation			.68			
Spelling			.56			
Responsiveness to Assignment Directions						

Table 13. Factor Intercorrelations

Factor	Factor					
	1	2	3	4	5	6
1	1.00					
2	.77	1.00				
3	.56	.67	1.00			
4	.53	.48	.37	1.00		
5	.38	.26	-.02	.20	1.00	
6	.30	.40	.39	.34	.08	1.00

The factors should correlate with global scores in a way similar to their importance, and Table 14 demonstrates that they do. When all cases are included, ANALYSIS and STYLE correlate best (.75 and.77), with MECHANICS third best (.57), and ISSUES, FACTS, and CONCLUSION least. Table 14 also includes some special analyses of special groupings of cases. In the second column, only the 105 cases with the lowest global scores are included. It was hypothesized that, for the lowest-scoring cases, MECHANICS and STYLE would take on relatively more importance, but this hypothesis was rejected. All of the correlations in the second column are reduced because of the reduction in variance for global scores, but the correlations for MECHANICS and STYLE were reduced about as much as were those for the other factors.

Table 14. Factor Correlations With Global Scores

Factor	Correlations with			
	Score 2 + Score 4		Score 2	Score 4
	All Cases (N = 237)	Lowest Scores (N = 105)	Selected Cases (N = 97)	Selected Cases (N = 100)
ISSUES	.46	.36	.40	.53
FACTS	.34	.17	.31	.43
CONCLUSION	.31	.20	.45	.29
ANALYSIS	.75	.56	.81	.74
STYLE	.77	.52	.78	.71
MECHANICS	.57	.37	.72	.72

The relative importance of a factor can be increased, however, by limiting the analyses to those institutions and readers who emphasize that factor. The third column of Table 14 was conducted only for those institutions where the reader who assigned Score 2 gave special emphasis to mechanics. These

selected Score 2 correlations increase substantially for MECHANICS. A similar analysis is given in column 4, for Score 4, with similar results.

Computer Analyses

To complement the analyses conducted of instructor ratings, analyses were also conducted of the legal memoranda by means of a computer program. These computer analyses were conducted using the Writer's Workbench system developed at Bell Laboratories. Specifically, the "Style" program of that system, which generates 73 variables automatically, was used. These variables were then correlated with global score ratings and with selected ratings of memoranda characteristics. Comparisons of variable averages were also made with other samples of writing.

Table 15 gives selected results from the Workbench analyses. More detail from these analyses is given in Appendix E. The readability grade level indexes represent attempts to scale reading difficulty so that textbooks and other materials can be evaluated with respect to their appropriateness for use in different grades. They are based on formulas that include word and sentence-length variables, estimates of word difficulties, and other variables. The different indexes use slightly different formulas, but all are similar (see, Flesch, 1974, 1979; Kincaid, 1973, for details of these methods). Table 15 shows that the three indexes presented suggest that the legal memoranda analyzed ranged in reading difficulty from about the eighth grade level to "grade 17." Taken together, the legal memoranda averaged between the eleventh grade level and somewhat above the 12th grade level.

The overall average sentence length in the legal memoranda was about 19 words, although one memorandum averaged only about 11 words per sentence while another averaged as many as 30 words per sentence. The percentage of simple sentences ranged from a low of 22 percent in one memoranda to 80 percent in another; complex sentences ranged from 13 percent to 60 percent; compound sentences from one percent to 18 percent, and compound-complex sentences from one percent to 29 percent.

Of verb types, "to be" verbs ranged from 14 percent to 45 percent and passive verbs from five percent to 29 percent. Other word types ranged from 7.8 percent to 13.2 percent for prepositions, 1.3 percent to 4 percent for conjunctions, 1.9 percent to 6.7 percent for adverbs, 24.1 to 35.5 percent for nouns, 10.8 to 25.6 percent for adjectives, 1.3 percent to 6.4 percent for pronouns, and one percent to 5 percent for nominalizations.

Table 15. Summary of Selected Variables from Writer's Workbench (N = 176)

Variable	Average	Minimum	Maximum
Readability Grade Level Indexes			
Kincaid	11.3	7.9	16.3
Coleman - Liau	11.2	9.0	13.7
Flesch	12.6	8.6	17.0
Sentence Information			
Number of sentences	148.0	69.0	259.0
Average sentence length (words)	19.3	11.5	30.0
Percent of simple sentences	45.4	22.0	80.0
Percent of complex sentences	36.6	13.0	60.0
Percent of compound sentences	6.0	1.0	18.0
Percent of compound-complex sentences	11.9	1.0	29.0
Word Information			
Number of words	2818.0	1319.0	4803.0
Average word length (letters)	4.9	4.5	5.3
Percent of "to be" verbs	33.6	14.0	47.0
Percent of passive verbs	15.7	5.0	29.0
Percent of nominalizations	3.0	1.0	5.0

Notes:

1. The percent of "to be" verbs is computed by Workbench as a percent of total verbs.
2. The percent of passive verbs is computed by Workbench as a percent of total non-infinitive verbs.
3. The percent of nominalizations is computed by Workbench as a percent of total words.

Table 16 shows correlations between the total of the four global ratings and selected Workbench variables. The only statistically significant correlations between the total global scores and the Workbench variables are for Number of Sentences (.14) and Number of Words (.19); it is commonly observed that amount written correlates with judgments of writing quality (Breland & Jones, 1982; Breland et al., 1987), and such correlations are substantial when time to complete the writing task is limited. Since the student legal memoranda were all take home assignments, some with page-length limitations, it would not be expected that length would correlate highly with overall quality. Examination of correlations between Workbench variables and global scores within institution and for specific readers suggests that, for some institutions and some readers significant correlations do occur, but about half of these correlations are negative and half positive. Consequently, when all readers and all institutions are pooled together, the result is no correlation overall.

Table 16. Correlations Between Global Rating Total Score and Selected Writers' Workbench Variables (N = 176)

Variable	r
Readability Grade Level Indexes	
Kincaid	.05
Coleman - Liau	.06
Flesch	.02
Sentence Information	
Number of sentences	.14
Average sentence length (words)	.07
Percent of simple sentences	-.02
Percent of complex sentences	-.01
Percent of compound sentences	.11
Percent of compound-complex sentences	-.01
Word Information	
Number of words	.19
Average word length (letters)	.05
Percent of "to be" verbs	-.05
Percent of passive verbs	-.04
Percent of nominalizations	-.06

Note: See notes for Table 15

Since "Clarity" was an important variable in the prediction of the global quality ratings, it was of interest to examine this rating variable in relation to the Workbench variables to determine if clarity might be in part explained by some of the Workbench variables. Table 17 shows correlations between the "Clarity" rating variable and selected Workbench variables. With the exception of the percentage of compound sentences (r = .18), none of the Workbench variables appear to correlate with "Clarity." It is thus suggested that clarity in the legal memoranda was a characteristic too subtle to be detected by a computer. The modest relationship with the percentage of compound sentences may occur either because compound sentences are more clear or because the law students who used more compound sentences just happened to be the same students who wrote more clearly.

Table 17. Correlations Between "Clarity" Ratings and Selected Writers' Workbench Variables (N = 176)

Variable	r
Readability Grade Level Indexes	
Kincaid	.01
Coleman - Liau	-.01
Flesch	-.02
Sentence Information	
Number of sentences	.23
Average sentence length (words)	.02
Percent of simple sentences	-.08
Percent of complex sentences	-.02
Percent of compound sentences	.18
Percent of compound-complex sentences	-.00
Word Information	
Number of words	.24
Average word length (letters)	.01
Percent of "to be" verbs	-.09
Percent of passive verbs	.08
Percent of nominalizations	-.05

Note: See notes for Table 15.

How do the computer analyses of the legal memoranda compare with similar analyses of other types of writing? Table 18 presents a comparison of the legal memoranda with text sampled from several recent periodicals. Usually, writers for national periodicals would be considered to be more sophisticated writers than the average law student. Table 18 suggests no important differences in the average readability grade level of student legal memoranda and national periodicals. There are some differences in sentences. The average sentence length is slightly longer for the periodicals, and the average percentage of compound sentences is somewhat larger for the periodical text. The largest differences occur for word types, however. The percentage of passive verbs and the percentage of nominalizations are much larger for the student legal memoranda, which justifies the emphasis in legal writing textbooks on these two writing problems. Passive verb forms do not indicate who is doing what, and thus can be unclear ("The victim was assaulted"). Nominalization refers to the process of turning adjectives, adverbs, and verbs into nouns ("Counsel made an objection to the expert's testimony," is a nominalization of "Counsel objected to the expert's testimony"). The percentage of pronouns is much less for the student legal memoranda, perhaps reflecting the formal nature of legal writing.

Table 18. Workbench Comparison of Legal Memoranda with 48 Samples of Periodical Text

Workbench Variable	Legal Memos		Periodicals		Effect Size
	Mean	S.D.	Mean	S.D.	
Readability Grade Level Indexes					
Kincaid	11.3	1.5	11.3	3.5	.00
Coleman - Liau	11.2	1.1	10.9	2.2	.18
Flesch	12.6	1.0	11.9	3.2	.27
Sentence Information					
Average sentence length (words)	19.3	2.9	21.2	5.5	-.45
Percent of simple sentences	45.4	10.2	42.6	12.8	.24
Percent of complex sentences	36.6	8.1	35.6	8.8	.12
Percent of compound sentences	6.0	2.9	8.9	3.9	-.85
Percent of compound-complex sentences	11.9	5.1	12.8	6.9	-.15
Word Information					
Average word length	4.9	.2	4.8	.3	.40
Percent "to be" verbs	33.6	6.6	30.3	5.3	.55
Percent passive verbs	15.7	5.0	8.1	3.5	1.79
Percent nouns	28.6	2.1	26.5	2.2	.98
Percent pronouns	3.3	.9	6.5	2.7	-1.78
Percent nominalizations	3.0	.9	1.5	.8	1.76

Rather than examining only averages, it is also of interest to compare individual legal memoranda. Table 19 gives a comparison of a student legal memorandum receiving the lowest global scores from all readers, a student legal memorandum, and a memorandum prepared by a leading law firm. The professional legal memorandum has higher readability grade level indexes, fewer complex sentences, more compound sentences, fewer "to be" verbs, more passive verbs, and more nominalizations than the student legal memoranda. Although it is difficult to generalize from only three samples, this comparison suggests that, while passive verbs and nominalizations may often be problems, they can also be used to good effect by sophisticated legal writers.

Table 19. Workbench Comparison of Three Legal Memoranda

Variable	Means for Three Memoranda		
	Student 5-9	Student 7-20*	Professional
Readability Grade Level Indexes			
Kincaid	10.7	9.9	13.0
Coleman - Liau	9.7	10.1	11.8
Flesch	10.3	10.3	14.4
Sentence Information			
Average sentence length	22.3	19.1	21.9
Percent of simple sentences	38.0	35.0	34.0
Percent of complex sentences	44.0	38.0	32.0
Percent of compound sentences	4.0	11.0	18.0
Percent of compound-complex sentences	14.0	16.0	16.0
Word Information			
Average word length	4.6	4.7	4.9
Percent "to be" verbs	38.0	40.0	32.0
Percent passive verbs	16.0	17.0	28.0
Percent nominalizations	2.0	2.0	4.0

*This is the exemplary student legal memorandum included as Appendix D.

Analyses of Sex Differences

Although observed average global ratings for females were slightly higher, no statistically significant sex differences occurred. Some significant sex differences in the taxonomy element ratings were observed, however. Of the 237 legal memoranda rated, a total of 229 were identified with respect to the sex of the writer. The 229 memoranda for which the sex of the writer was identified included 138 written by males and 91 written by females. Table 20 shows effect sizes (differences in standard deviation units) for eight taxonomy elements. All of the differences favor females, as indicated by the negative signs of the effect sizes computed by subtracting female means from male means and dividing by the average standard deviation. The largest effect size (-.33) was for a grouping of mechanics elements labelled "Selected Mechanics" and consisting of citation use and form, editing and proofreading, and grammar and usage. The next largest effect size (-.32) was for application of law to facts; however, tone and attitude (-.31) and accuracy of facts (-.30) also had negative effect sizes. In contrast to the taxonomy element ratings, there were no statistically or practically significant sex differences observed in the computer analyses.

Legal writing instructors provided detailed commentaries of 237 legal writing samples written in the first year of law school at 12 different institutions. Comments were listed and organized into 53 categories. From these listed and organized comments, a taxonomy of the elements of the legal memorandum as evidenced by the comments was constructed and from the taxonomy a rating form was developed. The taxonomy and the rating form were reviewed by an Advisory Committee of experienced

legal writing specialists and then revised. To introduce objectivity into the ratings, the rating form was then used to elicit judgments from legal writing professors other than those who had provided the samples. Judgments were made both of the overall quality of sampled legal memoranda as well as the quality and importance of specific elements.

Table 20. Sex Differences in Taxonomy Elements (N = 229, 138 Males and 91 Females)

Taxonomy Element	Males		Females		p	Effect Size
	Mean	S.D.	Mean	S.D.		
Accuracy (of facts)	6.59	1.12	6.90	.97	.03	-.30
Application of law to facts	5.71	1.52	6.20	1.59	.02	-.32
Use of key facts	6.09	1.48	6.38	1.33	.05	-.18
Tone and attitude	5.83	1.12	6.19	1.17	.02	-.31
Citations (use and form)	5.17	1.59	5.57	1.49	.05	-.26
Editing and proofreading	5.30	1.26	5.65	1.31	.05	-.27
Grammar and usage	5.48	1.21	5.80	1.28	.05	-.26
Selected mechanics	15.95	3.20	17.02	3.33	.01	-.33

Notes:

1. p is the probability that a sex difference is <u>not</u> statistically significant.

2. Effect Size is the mean sex difference in standard deviations. An Effect Size of .20 is considered to be "small," an Effect Size of .50 is considered "medium," and an Effect Size of .80 "large."

3. Selected Mechanics is the sum of Citations (use and form), Editing and proofreading, and Grammar and usage.

4. A negative Effect Size indicates that the mean for females is higher than the mean for males.

SUMMARY AND DISCUSSION

As anticipated from previous studies of English composition, analyses of the judgments of the samples revealed some disagreement among instructors as to what constitutes good or poor legal writing. Nevertheless, it was possible to identify important elements of legal writing quality by considering all of the ratings as an aggregate. Two types of ratings were made of the writing samples collected: (1) global ratings of the overall quality of the samples, and (2) ratings of which elements of the taxonomy were considered by the raters to be either strong or weak in a particular writing sample. Raters often disagreed on the overall quality of a given sample as well on the elements of it that were either strong or weak.

Elements of the taxonomy were first examined with respect to the frequency with which they were rated weak or strong in samples. Second, the taxonomy elements were examined with respect to the relationship between ratings of them and the global quality ratings. The results showed that those elements commented on most frequently were not the same elements that correlated best with global quality ratings. Although issue identification and citation form were noted frequently as either weak or strong aspects of a sample, ratings of clarity, flow, and application of law to facts correlated best with overall quality. Ratings of issue identification and citation form were not even among the top ten correlates with overall quality. This observation suggests that, even though legal writing instructors comment frequently on certain aspects of student legal memoranda (such as citation form), these aspects of legal writing are not necessarily important influences on their judgments of overall quality of a sample.

An analysis was conducted to determine which of the 53 taxonomy elements would contribute significantly in a prediction of overall quality, and 11 such elements were identified. Although eleven elements made statistically significant contributions in the prediction of global quality ratings, reasonable predictions could be made with as few as seven. The heaviest weights in the prediction occurred for application of law to facts, organization, flow, and clarity. The 53 elements of the taxonomy were also analyzed as groups in the categories used in the taxonomy. Those elements comprising the "Discussion" category of elements and the "Writing" category were found to be most highly correlated with overall quality and to be of equal importance. Less important categories, in their order of importance, were "Conclusion," "Questions Presented," "Brief Answer," and "Statement of Facts."

Confirmatory factor analysis was used to examine the factor structure of the taxonomy element ratings. Following some initial exploratory factor analyses, a six-factor model was posited based on the exploratory results and the logic of the taxonomy. The six factors, in order of importance, were: ANALYSIS, STYLE, MECHANICS, ISSUES, CONCLUSION, and FACTS. The ANALYSIS factor, which was most important, was primarily associated with application of law to facts, the use of key facts, support for statements, and completeness of explanation. The next most important factor was STYLE, which was primarily associated with clarity, flow, organization, and thesis statements. The third most important factor, MECHANICS, represented primarily what one would expect: grammar and usage, punctuation, and diction. ISSUES was primarily issue identification but included also other elements of questions presented and brief answer. CONCLUSION and FACTS were relatively weak factors related to two standard parts of the legal memorandum, the conclusion and the statement of facts.

Although it was possible to fit a factor model corresponding largely to the taxonomy element groupings, some deviations from the taxonomy were necessary. Rather than representing two separate factors, "Research" and "Analysis" were found to provide the best model fit when combined, and "Focus" did not fit as well with the ANALYSIS factor as it did with the STYLE factor. "Organization" did not form a factor of its own, as might be suggested by rating forms used by legal writing instructors, but combined with other elements (principally "Flow" and "Clarity") to create the STYLE factor. Finally, "Style" and "Mechanics," as represented in the taxonomy, did not form factors; three of the taxonomy elements categorized under "Style" combined with elements under "Organization" to form the STYLE factor and the remainder of the "Style" elements combined with "Mechanics" elements to form the MECHANICS factor.

Computer analyses of the legal memoranda sampled were conducted to examine the text at a finer level of detail than was possible from the rater judgments. They also allowed for comparisons with other kinds of writing for which the same computer analyses had been conducted, and some differences were observed. When compared with samples of periodical text, the student legal memoranda were seen to have proportionally more passive verb constructions and more nominalizations. These observations support the emphasis given in many legal writing textbooks on passive voice and nominalizations. When

related to the global quality scores assigned to the student legal memoranda by legal writing instructors, however, little relationship was apparent between the computer-generated variables and perceived quality. Although there was some indication that some instructors may have been influenced in their quality judgments by passive verb constructions, nominalizations, and readability, most instructors were not, and when the judgments were aggregated, no relationships occurred. The Workbench variables were also correlated with "Clarity" ratings of the memoranda to determine if any of these variables would help to explain clarity, but no significant correlations were revealed. Thus, the Workbench analyses indicate that computer-generated variables are not likely to explain either global quality ratings or clarity.

Some interesting sex differences were observed. Although no statistically significant differences were observed between the sexes in global quality ratings, females received significantly higher ratings on several of the taxonomy elements: accuracy of facts, application of law to facts, use of key facts, tone and attitude, citation use and form, editing and proofreading, grammar and usage, and mechanics. Why the global quality ratings did not also favor females is not clear.

The analyses conducted for this study give some indication of how legal writing differs from other kinds of writing, but the differences are debatable. Since application of law to facts, and legal analysis more generally, are obviously not features of most other kinds of writing, these aspects of legal writing would appear represent a primary difference, even though it may be argued that similar forms of deductive reasoning are used in non-legal situations. Clarity, flow, and organization are terms often used in evaluating other types of English composition, although "transition" is a more common term than "flow." What appear on the surface to be traditional English composition concerns often take on new meaning in legal writing, however. These traditional concerns are not identical in different genres. Organizational requirements, for example, are different for fiction and technical writing; in legal writing, they are informed almost exclusively by legal analysis. Thesis statements also have a special meaning in legal writing.

The analyses conducted suggest important implications for legal instruction, since some elements of the taxonomy seemed to be more important at low levels of performance. Although application of law to facts, clarity, and flow were important at both high and low levels of performance, grammar and usage, support for statements, and completeness of explanation appear to be especially important at low levels of performance. Another important implication for legal instruction resulting from these analyses is the types of textbooks supported. The legal writing textbooks whose content agrees most with the results of this study would include Calleros (1990), Neumann (1990), Shapo et al. (1991), Pratt (1990), and Teply (1990). Textbooks emphasizing primarily English composition topics are not supported by the results of this study.

This study was based on a taxonomy of legal writing developed from law school instructors' commentary on student legal memoranda. Accordingly, the taxonomy developed is representative of legal writing as it was taught in twelve law schools in 1991. The instructors who happened to be teaching legal writing in those schools at that time were not necessarily experts in legal writing, however. This fact raises the question of what a taxonomy of the legal memorandum would look like if it were designed solely by experts in legal writing. This question was addressed to the project Advisory Committee made up of experts in legal writing. One member of the Committee produced a draft taxonomy and, through review and commentary by other members of the Committee, an expert taxonomy was created. This expert taxonomy is presented in Table 21.

Table 21. Summary Taxonomy of Legal Writing Based on Expert Judgment

Questions Presented or Issue Identification
- Identifies issues correctly
- Includes key facts and legal context
- Uses readable length
- Uses readable sentence structure

Statement of Facts
- Provides context first, unless unnecessary
- Provides procedural posture, if any
- Organizes appropriately
- Uses only relevant facts and necessary background data
- Provides a readable narrative

Conclusion or Brief Answer
- Answers the Questions Presented
- Summarizes the Discussion
- Gives reasons briefly
- Is understandable to someone who does not know the analysis
- Parallels Questions Presented and organization of Discussion

Discussion

1. Research
   - Includes the controlling statutes and cases
   - Includes other relevant primary and secondary materials
   - Distinguishes controlling and persuasive authority

2. Organization
   - Uses logical large scale organization of issues and sub-issues
   - Organizes each sub-issue by topics in logical order rather than case by case
   - Uses introductions and thesis statements
   - Provides logical transitions
   - Synthesizes authority

3. Analysis
   a. Structure
      - Synthesizes a general rule or rules
      - Uses rule or rules to analyze facts
      - Compares facts, holdings, rules, or policies of cases to the problem
      - Contrasts arguments for and against outcomes using cases as defined above
      - Applies all relevant statutory language, legislative intent and statutory purpose
      - Deals with relationships to common law, as necessary

   b. Strength of Analysis
      - Explores the issues
      - Gives sufficient reasons for conclusions
      - Evaluates arguments realistically
      - Substantiates all statements with authority

4. Writing Style
   - Controls sentences
     - Uses concrete, active sentences
     - Keeps sentences to readable lengths
   - Uses proper word choice
   - Limits use of quotations
   - Uses coherent paragraphs

Mechanics
- Uses correct spelling
- Uses correct grammar
- Uses correct punctuation
- Uses correct citation form

The expert taxonomy is similar in many ways to the empirical taxonomy developed for the present study, but there are some differences. Most notable in the expert taxonomy of Table 21 is that "Organization" and "Writing Style" are subsumed under "Discussion," and "Mechanics" is viewed as a major category. In the empirical taxonomy, "Organization," "Style," and "Mechanics" were subsumed under "Writing," a major category separate from "Discussion." In either taxonomy, all elements and categories are of course highly interrelated. Consequently, categories are only convenient labels for different aspects of the discourse. Still, the differences between the expert and empirical taxonomies are instructive. The experts tend to consider writing as an integral part of the legal research and analysis, not as a separate category. In the words of one Advisory Committee member: "Legal research is legal analysis is legal writing."

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Appendix A. Student Consent Statement

Dear Law Student:

The Law School Admission Council is sponsoring a study of legal writing in which your instructor of legal writing is participating. The objective of the study is to observe legal writing as it is taught in U. S. law schools. The results of the study will be used to develop materials for guidance and instruction of future law students.

A copy of one of your written assignments that you have completed (with your name removed) may be used in the study. Your written assignment will always remain anonymous, and its use in the study will not affect your grade in any way.

The results of the study will benefit future law students.

If for any reason you do not want any of your written assignments used for this research, please inform your instructor.

Appendix B. Taxonomy of Elements of the Legal Memorandum

Elements of the Legal Memorandum
(as determined from instructor commentary)

Questions Presented

A statement phrased in question form and properly stating the legal context of the issues raised in the assignment. These are concise questions which frame the major legal issues addressed in the memorandum and avoid minor technical questions. If there is more than one issue, a separate question should be used for each.

Issue and key fact identification. Recognition of the key facts and main issues, correctly identifying the main issues of the problem, and integrating the most legally significant facts into the framing of the questions.

Legal expression and context. Phrasing the issue in the appropriate legal terminology and consequence (effect) and properly placing the issues and key facts in their legal context.

Brief Answer

The conclusion in response to the question, without the elaboration of facts or legal analysis. These are short, conclusive statements meant to answer the questions presented. Should parallel Questions Presented and Discussion.

Conciseness. Directness and simplicity of expression. Answers the question by applying a rule of law to the issue involved.

Relationship to Questions Presented. The degree to which the answer is responsive to the questions. The answer should be specific and problem-oriented; a broad, general statement of the law is not desired.

Statement of Facts

A description of the relevant and essential details and circumstances contained in the statement of the assigned problem. The goal of the statement of facts is twofold: (a) to include enough facts to give the reader a feel for the problem, and (b) to focus on those facts of legal relevance.

Relevance of Facts Stated. The selection and description of those facts which have a bearing or effect upon the determination of the issues presented, keeping only those relevant to the legal issues or necessary to the understanding of the problem. Factual uncertainties, the resolutions of which are legally relevant, should also be noted.

Accuracy. Detailed and correct reporting of the facts and circumstances of the problem statement. There should also be no discrepancies between the statement of facts and the facts as given in the assignment.

Adequacy of Detail. The extent to which the facts selected are specific and precise and fully illustrate the relevant activities and circumstances of the problem statement. Enough facts, including some not directly related to the legal issues, are included to (a) familiarize the reader with the circumstances of the problem and (b) establish a basis for comparing the facts of the problem with facts of cases used in the analysis.

Objectivity. Reporting the facts fairly, without insinuation, suggestion, or bias. Legal conclusions or conclusory treatments of factual issues should be absent. The facts are not presented in a manner designed to favor one legal conclusion or another.

Discussion

Issue and Sub-issue Description

This description should properly and clearly state the legal issues as posed in the questions presented and divide the issues into their legal components and describe them.

Research

The examination of available legal authorities relevant to the fact situation and issues at hand.

Authority Selection and Relevance. The identification of those cases which are similar to the issues and key facts at hand for purposes of analogy and distinction. Uses statutes, cases, and other legal authorities that are pertinent, controlling in their jurisdiction, and strongly persuasive.

Authority Description and Understanding. Explanation of the facts and holdings of the cases selected and understanding of the rationale and reasoning contained in those cases and their relation to statutes. All authorities should be described accurately and in enough detail for the reader to understand why the authority is being used and to convey the impression that the writer understands it.

Rule Identification and Explanation. Recognition of that authority which governs the determination of the issue presented. The rule of the law as expressed in the language of a statute or regulation or the holding of a case should be explained before applying it to the facts at hand.

Analysis

The examination of the facts against the language, rationale, and facts of the governing rule/case law for the purpose of determining how the question is to be decided.

Application of Law to Facts. The comparison of the facts at hand to the fact situation and rule/case law. This comparison should reveal similarities and distinctions upon which to base reasoning to a conclusion as to which rule or holding shall determine the issue presented. The facts of the problem are integrated into the analysis by relating them to the facts and policies of the ruling authorities.

Application of Rationale. Using the reasoning and policy considerations supporting the holdings of the authorities in the analysis of the fact situation at hand. To determine the rationale of the law, one asks: "Why is the law this way?" Policy statements, legislative history, or explanatory dicta can all be applied to the facts of the problem to establish a linkage between the problem and the legal authority.

Use of Key Facts. Identification of those facts which are held to be important by the case authorities in their holdings so that they may be used in the analysis of the case at hand. All legally significant facts from case authority or fact patterns in policy statements of statutes are compared to the facts of the problem to expand the link between the law and fact. Unlike analogy, this aspect merely helps to establish the factual link between the facts of the authorities and the facts of the problem.

Analogy and Comparison of Facts. Compares facts of problem with elements of statute or common law rule; compares facts of problem with facts in judicial opinions.

Treatment of Distinctions and Counterarguments. The recognition and handling of differences in fact situations which give rise to questions of the applicability of the rationale and rule to the fact situation at hand. Identifies lines of legal reasoning contrary to conclusions thoroughly discusses them. On a smaller scale, analyzes cases and factual differences, and shows why the rule may not apply to the problem.

Reasoning. The judgments and choices made in the selection of the analogies, comparisons, and distinctions used in support of the conclusion.

Support for Statements. The facts, authority, and rationale used to support statements and conclusions. Makes no statement of law or fact that is not backed up by a citation or explanation.

Completeness of Explanation and Discussion. The detail and depth of the illustrations and assessments of fact situations and rationales used in the explanation of choices made in the progress toward a decision. Explains the analysis of each issue and subissue.

Focus. Concentration and emphasis upon the major issues and the determining facts throughout the analysis keeping in mind the conclusion to be reached in assembling arguments. The priorities assigned to the various questions. Each section of the discussion should cover only one issue or subissue, without elements of others.

Conclusion

The response to questions presented as a result of the analysis of facts and law. This should also illustrate the reasons supporting the response. Often used in conjunction with or in lieu of a brief answer, the conclusion is meant to be more inclusive than the brief answer. Should state the issues and show the reasoning behind the decision.

Reasons. The description of the major factors and circumstances upon which the conclusion is based. The bases for the conclusion must be sound legal analysis clearly stated.

Responsiveness to Questions Presented. The conclusions should be the final specific resolutions of the major issues.

Comprehensiveness and Thoroughness. Explains what the answer is, but also, by way of a concise, on-point explanation of law, why the answer is what it is.

Recommendations for Further Action. When appropriate, recommendations are made for further analysis or other action.

Organization

The manner in which the writing is arranged so as to bring together, according to the issues addressed, those facts and authorities pertinent to the issues.

Choice of Organizational Strategy. The organizational strategy should be appropriate for the audience and the legal problem being analyzed.

Introductions and thesis statements. Thesis paragraphs at the beginning of each section and topic sentences at the beginning of each paragraph should clearly show the reader what is about to be discussed.

Transition, Flow, Logical Continuity, Coherence. Between and within paragraphs and sections, the passage from one idea to the next should be smooth. The relationship between sections and subsections should be clear to the reader. Appropriate sentence and paragraph order aids in making transitions.

Paragraphing. Paragraphs should be logical groupings of thoughts of reasonable length. Reasonable length means, at the extremes, more than one sentence but less than one page.

Use of Headings and Subheadings. As guides to the analysis, they should stand out from the text (boldface, etc.) and be specific and concise. They should not be used in place of topic sentences. Use of parallel sections when appropriate.

Style

Clarity. Easily understood by the audience to which the memorandum is addressed, usually a senior partner. Ray & Ramsfield (1987, p. 40) say the following about clarity in legal writing: "Clarity means writing so the reader can follow the writing step by step, without wondering what a phrase means or what the point of the paper is. When the writing is clear, the reader can forget about the writing itself and focus instead on the merit of the content."

Avoidance of verbosity. Avoids wordiness, needless detail, unnecessary information, needless repetitiveness, redundancy.

Sentence Control. Strong, straightforward sentences; longer sentences structured effectively with sentence length varied appropriately; action verbs, parallel structure, and other techniques should be used when appropriate. Avoids separating subject from verb with intrusive phrases, unnecessary complexities in sentences, choppiness, run-on sentences, sentence fragments.

Diction. Word choice that is precise, avoids jargon, achieves an appropriate level of formality, and avoids wordy constructions (e.g., nominalizations). Avoids vague, indefinite statements (e.g., "it appears that," "it would seem that," "might," "may," "I doubt," "suggests," "we may assume," etc.) and legalese (e.g., whereas, hereinafter, etc.)

Tone and Attitude. The audience is understood and the language used is appropriate for that audience. Legal writing is not informal. The writing does not insult the reader's intelligence. Avoids use of first person, contractions, colloqualisms,

underlining or italics, exclamation points, rhetorical questions and sarcasm.

Paraphrasing and Use of Quotations. Usually, quotations should be avoided through the use of paraphrasing. When quotations are unavoidable, they should be kept brief and incorporated smoothly into the text. However, the memorandum should either quote or rewrite, not semi-quote.

Other. Avoids use of generic "he" or other sexist language. Avoids omission of articles when needed (e.g., "the" defendant).

Mechanics

Citations. Properly attributes all statements and uses correct Blue Book form for all citations.

Editing and Proofreading. Typographical errors, missing words, gaps in the text, capitalization, etc., corrected.

Grammar and Usage. Subject-verb agreement, pronoun usage, and use of proper tense are common problems in much writing.

Punctuation. The rules of punctuation apply, with special attention to restrictive and nonrestrictive (set off by commas) phrases and clauses, use of parenthetical expressions, and separating the elements of a series by commas.

Spelling. In law student papers, commonly misspelled words are "judgment" (not "judgement") and "argument" (not "arguement").

Responsiveness to Assignment Directions

The degree to which the writer has addressed the issues presented by the instructor as well as the mechanical requirements such as deadlines, page and word limits, etc.

Appendix C. Rating Forms and Instructions

EDUCATIONAL TESTING SERVICE PRINCETON, N.J. 08541

609-921-9000
CABLE-EDUCTESTSVC
PROGRAM RESEARCH OFFICE

November 1, 1991

Dear [Legal Writing Professor or Instructor]:

As we discussed on the telephone, the Law School Admission Council is sponsoring a study of legal writing. This study is being conducted by Educational Testing Service, and it is expected that about 12 law schools will participate. Enclosed are instructions and materials for use in the study if you wish to participate.

Our Advisory Committee has agreed that instructors or professors participating in the study should receive payment of $500 for collecting 20 legal writing samples, providing commentaries on these samples, keeping a roster of students with code numbers, and scoring 20 writing samples from another participating institution. An initial payment of $300 will be made when the 20 writing samples and instructor's commentaries on them have been received (by January 10, 1992). The remaining $200 will be paid when student rosters and scores on 20 writing samples from another institution are received (by April 15, 1992).

Enclosed are the following:

1. Specifications for Legal Writing Samples and Instructor's Commentaries.

2. A statement addressed to law students informing them of the study and allowing them to object to the use of their written assignments if they wish to do so. Consent is implied if no objections are raised. Instructors will need to obtain copies of this statement depending upon the size of the group from which the 20 samples are to be selected.

3. A student roster, to be retained by the instructor, which lists the institution's code number for each student, the student's name, and a score assigned to the writing sample collected for that student.

4. A student roster, to be returned to ETS later in the study, which lists the institution's code number for each student, a Law School Admission Services (LSAS) code number, and the score assigned to the writing sample collected for that student. The LSAS code numbers will be entered on this roster by the instructor from a

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listing of students attending the law school sent to instructors by LSAS. This procedure protects the student's anonymity while at the same time allowing for a match with data on file at LSAS.

I recommend the following steps. First, distribute the statement informing students of the study. Second, decide which student writing samples should be selected to provide a good range of the quality of writing done by students at your institution. Third, get clean copies made of the 20 writing samples without any instructor annotations on them. Fourth, read and comment on the papers in some detail (preferably using a tape recorder). Fifth, complete the first student roster (which you will retain) listing each student's name and the score assigned to their writing sample. Finally, send the clean copies, the annotated copies, and the tapes to ETS by January 10, 1992.

In February, we will send you clean copies of 20 writing samples from another institution. We will request that you provide scores on these in the range 6 (high) to 1 (low) as if they had been written by students at your institution. No commentaries are needed for these writing samples; only a global score is needed. At about the same time, we will ask LSAS to send you an alphabetical listing of students attending your law school with LSAS code numbers. You will use this listing to enter the LSAS code numbers on the second student roster (to be returned to ETS).

Our Advisory Committee is excited about the project and believes that it will have an important influence on legal writing instruction. Your assistance in the study is very much appreciated.

If you have any questions, please give me a call (609-734-5187) or send a FAX (609-734-5010).

Sincerely,

Hunter M. Breland
Senior Research Scientist

EDUCATIONAL TESTING SERVICE PRINCETON, N.J. 08541

609-921-9000
CABLE-EDUCTESTSVC
PROGRAM RESEARCH OFFICE

February 25,1992

MEMO TO: Legal Writing Study Participants

FROM: Hunter M. Breland

As promised, I am sending you samples of legal writing assignments and student responses from another of our participating institutions. We have tried, where possible, to disguise the identity of the institution, but in some cases it is very difficult. Don't be fooled, however, by the state in which the assignment occurs. Some of our participating institutions have assignments related to situations outside their own state.

We do not have copies of all the statutes and case law relevant to the assignments, but we believe that you can determine the essence of the law from the better samples. Please let me know if you disagree.

You may keep the writing samples, so if you want to make notes on them as you read them that is okay. I am enclosing rating forms for each of the writing samples and request that you enter, at the top, a global score on a 6 (high) to 1 (low) scale similar to what you did for your own samples. You may find it difficult, however, to use the entire range of scores because the institution from which the samples came may be very different from your own institution. But try to avoid extremes, such as using only two or three score levels. And try not to be overly critical because an institution uses a format different from your own.

Once you have entered the global score, we will appreciate your indicating what characteristics of a sample you found to be especially weak (--), weak (-), strong (+), or especially strong (++) by checking that characteristic in the appropriate place. There is no need to rate all of the characteristics, but checks on a minimum of 10 or so characteristics will be helpful. If possible try to rate subelements rather than major categories (e.g. "Writing"). These rating forms were developed from the detailed commentaries you and other participants sent earlier, and your ratings of them will help to determine what aspects of legal writing are deemed most important in the 12 participating institutions taken collectively. We will not be making institutional comparisons, and your ratings will be kept confidential. I will appreciate your comments on the form and the draft taxonomy of legal writing characteristics enclosed.

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We will appreciate receiving these completed rating forms no later than March 31 so that we can initiate the paperwork to have your final payment of $200 (plus expenses) sent before the academic year is over. Make sure that you send a statement of all expenses incurred (with receipts) along with the rating forms. Please inform me also if you have not received the first payment of $300 (plus expenses).

Many thanks for your efforts to date, including dealing with the ETS bureaucracy. Please call me if you have any questions.

EDUCATIONAL TESTING SERVICE PRINCETON, N.J. 08541

609-921-9000
CABLE-EDUCTESTSVC
PROGRAM RESEARCH OFFICE

July 23, 1992

Dear [Legal Writing Professor or Instructor]:

You indicated earlier that you would be interested in rating more writing samples from another law school. At its last meeting, the Advisory Committee decided that another set of ratings would be useful. Enclosed is a set of 20 writing samples different from the one you rated before. The same basic procedure is to be followed, although we have made some minor modifications in the rating form. One difference, however, is that we would like the samples returned this time (without marks or comments written on them). We would like them returned because of the possibility (though unlikely) that still a third rating might be desired.

I am enclosing rating forms for each of the writing samples and request that you enter, at the top, a global score on a 6 (high) to 1 (low) scale similar to what you did before. Please attempt to use the entire range of scores; the previous ratings indicate that this is possible within all of the institutional sets. Note that the ID codes entered on the forms refer to institution and student within institution. Thus "11-1" identifies Institution #11 and Student #1, "11-2" identifies Institution #11 and Student #2, etc.

Once you have entered the global score, we will appreciate your indicating what characteristics of a sample you found to be especially weak (--), weak (-), strong (+), or especially strong (++) by checking that characteristic in the appropriate place. There is no need to rate all of the characteristics, but checks on a minimum of 10 or so characteristics will be helpful. If possible, try to rate sub-elements rather than major categories such as "Writing" or "Analysis." We will not be making institutional comparisons, and your ratings will be kept confidential. I will appreciate as well your comments on the form and the draft taxonomy of legal writing characteristics enclosed.

A few comments we have received from previous raters may be helpful. Some raters felt the need for a neutral rating, that is, neither positive nor negative. We assume that an element is neutral if a rater makes no checks for it. Therefore, if you feel neutral about an element, just leave it blank. Another comment we received indicated the need for a "Not Applicable" rating to cover situations where an institution may not have required an element of the rating form (Headings, for example). After some thought, we decided not to introduce such a rating because, if raters believe an element is important, then we would want the analyses to show that--even if some institutions do not

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require these elements. Finally, some raters have wanted to make finer distinctions than we are requesting--for example, a rating between (-) and (--) or between (+) and (++). Because most raters do not want to make these fine distinctions, we have decided to leave the form as it is.

We will appreciate receiving these completed rating forms no later than October 1. Payment of $200 (plus expenses) will be sent to you when the ratings and the samples are returned to us. You may receive an additional contract letter from our Contracts Office. That will have to be signed and returned before the payment will be released.

Many thanks. Please call if you have any questions.

Sincerely,

Hunter M. Breland
Senior Research Scientist

First Draft of Rating Form

ID_____ Overall Score_____ Rater_____

	--	-	+	++
Questions Presented				
Issue and key fact identification				
Legal expression and context				
Brief Answer				
Conciseness				
Relationship to Questions Presented (On point)				
Completeness				
Statement of Facts				
Relevance of facts stated				
Recognition of legally significant facts				
Adequacy of detail				
Objectivity (seeing both sides)				
Discussion				
Issue and sub-issue description				
Research				
Authority case selection and relevance				
Authority case description and understanding				
Identification of controlling authority				
Analysis				
Application of law to facts				
Application of rationale				
Use of key facts				
Analogy and comparison of facts				
Treatment of distinctions and counterarguments				
Reasoning				
Support of statements				
Completeness of explanation and discussion				
Focus				
Conclusion				
Reasons				
Responsiveness to Questions Presented				
Comprehensiveness and thoroughness				
Writing				
Discourse				
Introductions and thesis statements				
Organization				
Paragraphing, transition, flow, logical continuity				
Paraphrasing				
Style and tone				
Diction (word choice, precision)				
Conciseness (non-verbosity)				
Coherence and clarity				
Sentence sense and simplicity				
Use of parallel structure				
Mechanics				
Citations (use and form)				
Quotations (use and form)				
Editing and proofreading				
Subject/verb agreement				
Pronoun usage				
Punctuation				
Spelling				
Responsiveness to Assignment Directions				

First Revision of Rating Form

ID_____ Overall Score_____ Rater_____

	--	-	+	++
Questions Presented				
Issue and key fact identification				
Legal expression and context				
Brief Answer				
Conciseness				
Relationship to Questions Presented (on point)				
Statement of Facts				
Relevance of facts stated				
Accuracy				
Adequacy of detail				
Objectivity				
Discussion				
Issue and sub-issue description				
Research				
Authority selection and relevance				
Authority description and understanding				
Rule identification				
Analysis				
Application of law to facts				
Application of rationale				
Use of key facts				
Analogy and comparison of facts				
Treatment of distinctions and counterarguments				
Reasoning				
Support for statements				
Completeness of explanation and discussion				
Focus				
Conclusion				
Reasons				
Responsiveness to questions presented				
Comprehensiveness and thoroughness				
Writing				
Organization				
Introductions and thesis statements				
Transition, flow, logical continuity, coherence				
Paragraphing				
Use of headings and sub-headings				
Style				
Clarity				
Conciseness				
Sentence sense and simplicity				
Diction (word choice, precision)				
Tone and attitude				
Paraphrasing and use of quotations				
Mechanics				
Citations (use and form)				
Editing and proofreading				
Grammar and usage				
Punctuation				
Spelling				
Responsiveness to Assignment Directions				

Second Revision of Rating Form

ID_____ Overall Score_____ Rater_____

	--	-	+	++
Questions Presented				
Issue and key fact identification				
Legal expression and context				
Brief Answer				
Conciseness				
Relationship to Questions Presented (on point)				
Statement of Facts				
Relevance of facts stated				
Accuracy				
Adequacy of detail				
Objectivity				
Discussion				
Issue and sub-issue description				
Research				
Authority selection and relevance				
Authority description and understanding				
Rule identification				
Analysis				
Application of law to facts				
Application of rationale				
Use of key facts				
Analogy and comparison of facts				
Treatment of distinctions and counterarguments				
Reasoning				
Support for statements				
Completeness of explanation and discussion				
Focus				
Conclusion				
Reasons				
Responsiveness to questions presented				
Comprehensiveness and thoroughness				
Recommendations for further action				
Writing				
Organization				
Choice of organizational strategy				
Introductions and thesis statements				
Transition, flow, logical continuity, coherence				
Paragraphing				
Use of headings and sub-headings				
Style				
Clarity				
Conciseness				
Sentence control				
Diction (word choice, precision)				
Tone and attitude				
Paraphrasing and use of quotations				
Mechanics				
Citations (use and form)				
Editing and proofreading				
Grammar and usage				
Punctuation				
Spelling				
Responsiveness to Assignment Directions				

Appendix D. An Exemplary Student Legal Memorandum With Instructor's Assignment and Commentary

Assignment 3

Beth Casey was a police officer for the City of Ship Bottom, New Jersey. In October, 1991 she was assigned to Beat 24, the only beat in which two officers rode together in a squad car. Her partner during this rotation was Nancy Lagnee While they were on Beat 24, Casey and Lagnee and were on the 7 to 3 shift. They were each entitled to 1/2 hour lunch, which had to be taken between 12:00 noon and 1:00 p.m.

On October 15, 1991, Casey was returning from lunch to the Ocean Street Station to pick up Lagnee. Lagnee had stayed at the station during the lunch break to tend to some administrative matters, and Casey had taken the squad car to grab a bite. Regulations of the Ship Bottom Police Department permitted officers to drive the Department's vehicles to and from lunch and between the station and their homes before they came on and after they went off duty.

Casey was about five minutes away from the station and still had about 15 minutes left on her lunch hour when she heard over the squad car radio a call coming into the Ocean Street Station dispatcher. The call was from the bartender at the Broken Bottle Tavern, reporting that he had just been beaten and robbed of all the money in the cash register by a customer who had evidently had too much to drink. The bartender reported that the customer had sped off in a silver Porsche with a New Jersey license IM GREAT.

When Casey heard the dispatcher take this call she was just a block and a half away from the Broken Bottle Tavern. As she picked up the radio to inform the dispatcher that she was in the immediate vicinity, a silver Porsche with a New Jersey license IM GREAT spun around the corner and started down the street immediately in front of her. As it headed down the street, it was going 10 m.p.h over the posted 30 m.p.h. speed limit. The neighborhood was a combined residential and small commercial area of town. Casey turned on her siren, flashed the light on the squad car and informed the dispatcher that she had the suspect in sight.

When Casey turned on her siren and flashing light, the silver Porsche accelerated. Soon both cars were outside the residential area of town and on a two lane flat road that ran along the coast. The day was clear, and the pavement was dry. Casey was going 60 m.p.h as she passed a sign with a posted 45 m.p.h. speed limit. Suddenly, in an attempt to escape, the driver of the silver car braked to make a left turn. His car "fish tailed" in front of Casey's, bounced off a tree on the side of the road and spun back onto the road. Casey attempted to brake, but her car careened into the Porsche.

The paramedics arrived at the scene and had to remove both drivers from the cars. The driver of the Porsche was basically unhurt, except for a few cuts and bruises. Casey, however, was severely injured. She had to be hospitalized indefinitely and the doctors predicted that she probably

would be unable to return to her job on the Ship Bottom Police force.

Casey was entitled to receive Worker's Compensation for her injuries. But her bills are exorbitant, and she is in a lot of pain. You are working as an associate in a local law firm and she has sought your firm's advice. A partner in your firm has found out that the driver of the Porsche was Chris Spellman, a brash young man of about 30. He was one of Ship Bottom's wealthiest citizens, having made a lot of money in wheeling and dealing in property along Ship Bottom's extensive coastline. The day Casey was injured, Spellman had had a bit too much to drink at the Broken Bottle Tavern, though during the busy lunch hour, the bartender was not aware of exactly how much alcohol Spellman had consumed. He had assaulted and robbed the bartender on a dare from one of his drinking buddies.

Before you were put to work on the case, your firm had decided to sue Spellman and the attorneys had filed a complaint charging him with negligence. Spellman's attorneys moved for summary judgment, claiming that the "fireman's rule" bars Casey from recovering anything from Spellman. Your firm must respond to the motion for summary judgment. You have been asked to do a memorandum analyzing whether you can defeat the motion and get to trial. DO NOT discuss the New Jersey Dram Shop Act. This memorandum should be 10 to 12 pages long. It is due on Tuesday November 26.

M E M O R A N D U M

TO:

FROM:

DATE: November 27, 1991

RE: Motion for summary judgment in Casey v. Spellman

STATEMENT OF FACTS

Our client Beth Casey, a police officer, sued Chris Spellman for injuries she sustained in a collision between their vehicles. The accident occurred while Casey was attempting to arrest Spellman. Spellman has moved for summary judgment, claiming that the fireman's rule protects him from liability. You have asked me to determine whether we can defeat his motion.

Casey worked for the City of Ship Bottom, New Jersey. In October 1991, she was assigned to Beat 24, a 7:00 to 3:00 shift with 30 minutes for lunch. On Beat 24, two officers ride together in the squad car. Casey had just finished eating lunch while her partner Lagnee took care of some work at the station. She had about 15 minutes left on her break and was returning to the station to pick up Lagnee. When she was about five minutes from the station, she heard over her squad car radio a call to the dispatcher from the bartender at the Broken Bottle Tavern. The bartender reported that he had just been beaten and robbed of the money in the tavern's cash register by a customer who had apparently had too much to drink. The customer had raced off in a silver Porsche with New Jersey tags IM GREAT. When she heard the call, Casey was a block and a half away from the Broken Bottle. As she picked up the radio to tell the dispatcher that she was in the vicinity, a silver Porsche with license IM GREAT rounded the corner and started down the street ahead of her. It was going 10 m.p.h. over the 30 m.p.h. speed limit. Casey told the dispatcher she was in sight of the suspect and turned on the squad car's siren and flashing light.

When Casey switched on her siren and flasher, the driver of the Porsche accelerated, and Casey pursued. They soon left the town on a flat two-lane road. The posted speed limit was 45 m.p.h. Casey noticed that she was going 60 m.p.h. in pursuit of the Porsche. Suddenly, the driver of the Porsche braked and tried to make an evasive left turn. His car fishtailed, hit a tree on the side of the road, and ricocheted back onto the roadway. Casey could not stop in time and her car smashed into the Porsche. The driver of the Porsche, Chris Spellman, sustained only minor cuts and bruises, but Casey was severely injured. She will probably not be able to return to her job with the police force. Casey received worker's compensation payments, but her bills exceed the allotted amount and she is suffering a great deal of pain.

On the day of these events, it appeared that Spellman had had a bit too much to drink at the tavern, although the bartender did not know exactly how many drinks he had consumed. He assaulted and robbed the bartender on a dare from one of his drinking buddies.

If Spellman's motion for summary judgment is granted, our client will have to settle for her worker's compensation. If the motion is denied, we have a good chance of succeeding at trial or settling out of court, and our client would recover additional compensation for her injuries and suffering.

QUESTION PRESENTED

Whether a motion for summary judgment based on the fireman's rule should be granted in favor of a citizen who was suspected of assault and robbery, who had had a bit too much to drink, and who

was fleeing from a police officer responding to a call during her lunch break, when the officer sues the citizen for injuries she sustained while attempting to arrest him.

CONCLUSION

The evidence in this case is sufficient for the plaintiff to defeat a motion for summary judgment. The fireman's rule is the law in New Jersey, but there are three exceptions under which recovery is allowed by firefighters and police officers. Two of these arguably apply to the present case.

The first exception arises when the officer is not assuming any special risks inherent to her occupation. The pursuit of a suspected felon is an emergency situation which police officers are expected to handle, and Casey was fully prepared to encounter the risks involved. Our case does not fall within this exception.

A second exception permits a finding of liability when the officer's injury is the result of the defendant's subsequent act which is independent of the act that occasioned the officer's initial response. While it is arguable that Casey could have expected Spellman to flee from her and take dangerous evasive action, it is equally arguable that Spellman's evasive acts were independent of the robbery which brought Casey to the scene. We can defeat summary judgment on this exception because there is a triable issue of fact as to whether there was an independent act.

The third exception allows the officer to recover when the act which created the hazard that caused her injury constitutes willful or wanton misconduct. A jury could find that Spellman's actions to avoid arrest (speeding and attempting to make a

dangerous turn) which caused Casey's injuries were intentional acts committed without regard for the consequences; that is, that they were willful and wanton.

Since it is a question for the jury whether the facts of our case fall under the exceptions to the fireman's rule, the motion for summary judgment can be defeated.

ANALYSIS

Our client Beth Casey seeks recovery from Chris Spellman for injuries she suffered while attempting to arrest him. Spellman contends that recovery is barred by the fireman's rule and has moved for summary judgment. To defeat summary judgment, we must show that it is a triable issue of fact whether our case falls under the fireman's rule.

The fireman's rule protecting an owner or occupier of property from liability to a fireman "for negligence with respect to the creation of a fire" is firmly established in New Jersey. Krauth v. Geller, 157 A.2d 129, 130 (N.J. 1960). It is the very essence of a fireman's business to deal with hazardous situations, and society compensates firefighters for encountering the risk of fires by paying them for their services and by providing worker's compensation for their injuries. Id. at 131. The rule set out in Krauth was extended to cover police officers in Berko v. Freda, 459 A.2d 663 (N.J. 1983). There the Court held that because police officers, like fire fighters, are "paid to confront crises and allay dangers created by an uncircumspect citizenry," they too should be covered by the fireman's rule. Id. at 666.

In its basic form, then, the fireman's rule seems to apply in our client's case. Casey was a police officer injured in the course of her duties and therefore should be barred from recovery. Since its decision in Krauth, however, the court has carved out three principal exceptions to the basic rule. If a jury could reasonably find that our case falls under one of those exceptions, the defendant's motion for summary judgment will be denied.

The first exception is that the fireman's rule does not apply to an officer who is injured when she is not assuming any special risks inherent in her occupation. Caroff v. Liberty Lumber Co., 369 A.2d 983 (N.J. Super. Ct. App. Div. 1977). In other words, an officer can recover when she was injured while faced with a situation that a member of the general public would face or an emergency situation which she is not equipped to handle. Rosa v. Dunkin' Donuts of Passaic, 583 A.2d 1129 (N.J. 1991); Alessio v. Fire & Ice, Inc., 484 A.2d 24 (N.J. Super. Ct. App. Div. 1984). In Alessio, for example, the plaintiff was an off-duty policeman who was injured when, at the request of a tavern employee, he attempted to defuse a confrontation between two groups of intoxicated patrons. Because the plaintiff was off duty, alone, out of uniform, and without back-up from his department, the court held that he was subjected to undue risks and denied the tavern's motion for summary judgment. Alessio, 484 A.2d at 30. Unlike the policeman in Alessio, Casey was in uniform and in her squad car, was responding to a dispatcher's call, and was in contact with her department. It might be argued that she was off duty during her lunch break, but this first exception to the fireman's rule rests not on whether the officer was on duty but on whether she was

equipped to handle the risks she faced. The only possible counterargument here is that Casey's partner was not present as she normally would be. However, it would be difficult to argue that Casey would have responded any differently to the situation or suffered less serious injuries had Lagnee been with her.

Even an officer who is on duty could recover under this exception to the fireman's rule if injured while involved in a non-emergency situation. Rosa, 583 A.2d at 1134; Chipps v. Newmarket Condominium Ass'n, 549 A.2d 66 (N.J. Super. Ct. Law Div. 1988); Caroff, 369 A.2d 983. In Caroff, a park ranger hurt himself when he slipped while crossing the defendant's negligently kept road on the way to his quarters. Although he was on duty at the time, the ranger could recover from the property owners, since he was on the property like any other citizen, not in the role of protector of the public or in response to an emergency. Caroff, 369 A.2d at 984-987. Similarly, the court in Rosa observed that a if policeman entered a donut store while on duty to purchase coffee or a donut, he would be a customer for purposes of the law, and if he were injured, "the fireman's rule would not prohibit his recovery against the property owner." Rosa, 583 A.2d at 1134. Again, our case is not analogous. Casey's injuries resulted from her pursuit of a suspected felon – certainly an emergency response situation – and she was equipped to handle that situation. Our case does not fall under the first exception to the fireman's rule, so we cannot defeat summary judgment on that basis.

A second exception to the fireman's rule arises when the injury is the result of a subsequent negligent act or omission which is independent of the negligence that occasioned the

officer's presence. Rosa, 583 A.2d at 1134; McCarthy v. Ehrens, 514 A.2d 864 (N.J. Super. Ct. Law Div. 1986); Wietecha v. Peoronard, 510 A.2d 19 (N.J. 1986); Trainor v. Santana, 432 A.2d 23 (N.J. 1981). Unless the acts of the defendant after the arrival of the officer are "closely connected" to the reason for the officer's presence, they are not covered by the fireman's rule. Rosa, 583 A.2d at 1133-1134.

In Trainor, for example, a patrolman was attempting to arrest the defendant after a car chase. When he leaned into the defendant's car, the defendant tried to escape, and the officer's arm was momentarily trapped in the door. The officer freed himself but was then struck by the car as the defendant drove off. The court held that the defendant's additional act of negligence would bar application of the fireman's rule. Trainor, 432 A.2d at 23-25. In our case, Spellman's accelerating when he saw Casey's flashers and his attempted evasive maneuver could be considered acts independent of the robbery and assault which occasioned the pursuit. If so, these acts would bar application of the fireman's rule.

Another case whose facts are favorable to us is McCarthy, in which police officers were called to a New Jersey Turnpike toll plaza to deal with a very drunk driver stopped there. As the officers approached the toll plaza, the defendant drove away. The officers followed him as he drove down the right shoulder and attempted to get him to stop. Suddenly, the defendant turned across three lanes of traffic and crashed into the guardrail on the left shoulder. The plaintiff's deceased (a policeman) was killed by another motorist when he walked back across the highway

after checking on the defendant. The evasive acts of the defendant were held to be independent acts, and therefore the plaintiff's suit was not barred by the fireman's rule. McCarthy, 514 A.2d at 865-868. In our case, as in McCarthy, the defendant made evasive maneuvers after realizing that the officer was pursuing him, and these acts were the proximate cause of the officer's injuries. There are two distinctions, however. First, while McCarthy was summoned to the toll plaza, from which the defendant then fled, Casey was called to pursue a vehicle already in motion; there was a difference in what the two officers could reasonably expect to encounter. Second, the defendant in McCarthy was very drunk, whereas there is no conclusive evidence in our case of Spellman's level of intoxication. Still, in ruling on a motion for summary judgment the court must view the facts in the light most favorable to the plaintiff, so Spellman should be considered a drunk driver for the sake of the motion.

These cases suggest that there is good support for the claim that Spellman's acts were independent enough of the original act occasioning Casey's presence for us to avoid application of the fireman's rule. A counterargument can be found in Rosa, however. In that case, the officer was summoned to a store to deal with a medical emergency. Therefore he could not recover for injuries sustained when he slipped in the store's kitchen while trying to move the patient, even though it might have been negligent for the store to keep their floor in such a slippery condition. It was reasonable for him to expect that he might be required to assist in handling the patient under less than ideal conditions. Rosa, 583 A.2d at 1133-1134. See also Maryland Casualty Co. v. Heiot,

540 A.2d 920 (N.J. Super. Ct. Law Div. 1988) (firefighter who slipped on ice while responding to call for first aid barred by fireman's rule from recovering against landowner). Similarly, in our case, when Casey responded to a call to arrest a suspect escaping by car, she must have recognized the possibility that the he might take dangerous evasive actions. Indeed, in the words of the Berko court, "one who does not know the risks inherent in a high speed chase should not engage in high speed chasing." Berko, 459 A.2d at 667.

Does our case fall under this exception? There are analogies to Rosa, a recent Supreme Court case. But McCarthy and Trainor are closer cases on the facts and they should control. Looking at the facts in the light most favorable to the plaintiff, as we must in a summary judgment situation, it is clearly a triable issue of fact whether Spellman's acts of departing from the tavern and fleeing from Casey were independent of the act of robbery that occasioned Casey's response. Hence we have a good chance of defeating summary judgment under this exception.

The third exception to the fireman's rule is that the officer can recover from a defendant whose willful and wanton misconduct created the hazard that caused the injury. Entwistle v. Draves, 510 A.2d 1 (N.J. 1986); Mahoney v. Carus Chemical Co., Inc., 510 A.2d 4 (N.J. 1986). Willful and wanton conduct is distinguished from negligence on the one hand and intentional wrongdoing on the other. Mahoney, 510 A.2d at 9; Berg v. Reaction Motors Div., 181 A.2d 487 (N.J. 1962). Unlike negligent acts, willful and wanton acts are deliberate and therefore more culpable. And unlike the intentional actor, the willful and wanton actor does not intend

the harm that results; he need only realize the possibility that injury will follow from his intentional act. Mahoney, 510 A.2d at 9; McCarthy, 514 A.2d at 870. The question in our case is whether Spellman's conduct which resulted in Casey's injuries could be found by a jury to be willful and wanton.

In Mahoney, a fireman was injured in fighting a chemical fire which started when some potassium permanganate powder packaged in fiber-paper drums ignited. It turned out that the manufacturer (Carus Chemical Co.) knew that the permanganate was very hazardous and especially likely to spontaneously combust when packaged in fiber-paper drums. Yet despite its knowledge of the risk, it had shipped 100 fiber-paper drums of potassium permanganate to the warehouse where the fireman was injured. The fireman sued Carus for its willful and wanton misconduct that led to his injuries. The court overturned summary judgment for Carus, holding that the fireman's rule would not provide immunity for Carus's acts if a jury found that they constituted wanton and willful misconduct. Id. at 5-13. In our case, it is at least arguable that Spellman knew that his conduct – especially his drinking before driving and his sudden attempt to turn off the road – would likely result in injury. Evidence that he intended the actual harm that resulted is unnecessary. It is enough that a jury could reasonably find that his misconduct was not mere inadvertence. He certainly intended to turn left and was arguably reckless with regard to the consequences of that act. Therefore the question of whether Spellman's conduct was willful and wanton should go to a jury.

More support for this argument is offered by McCarthy. In that case the defendant, who was intoxicated, drove erratically

down the shoulder of the highway with two flat tires, then crossed the highway and smashed into the guardrail on the other side. A policeman who had been pursuing the defendant was killed when he walked back across the highway after checking on the defendant. McCarthy, 514 A.2d at 866-867. The court held that the defendant's conduct could be found by a jury to be willful and wanton. Id. at 869. Like the defendant in McCarthy, Spellman had been drinking before driving and made a dangerous evasive maneuver. The evidence of disregard for risks in our case is not as strong as in McCarthy, since it is not certain that Spellman was legally drunk. Still, there is a good analogy here. Again, there is enough evidence of wanton behavior in our case to defeat summary judgment; the question should go to a jury.

Also in support of our effort to defeat summary judgment is the fact that while fleeing from Casey, Spellman violated statutes that establish speed limits and prohibit driving under the influence of alcohol. N.J. Stat. Ann. §§ 39:4-50, 39:4-98 (West 1990). A jury might find that this conduct was willful and wanton, since it was deliberate (i.e., not negligent) and showed disregard for the risks.

Two cases that could be cited against this argument are McMahon v. Chryssikos, 528 A.2d 104 (N.J. Super. Ct. Law Div. 1986) and Brown Trucking Co., Inc. v. Flexon Industries Corp., 552 A.2d 1026 (N.J. Super. Ct. Law Div. 1988), but both can be distinguished from our case. In McMahon, a drunk driver who rear-ended the plaintiff was sued for punitive damages. It was held that the drunk driving did not constitute willful and wanton misconduct unless there were "further aggravating factors."

McMahon, 528 A.2d at 109. However, the analogy here is too weak to justify summary judgment in our case. McMahon concerned a punitive damages claim, not a fireman's rule claim as in our case. In fact, the McMahon court itself distinguished the case from fireman's rule cases like McCarthy. Id. at 108. Even if McMahon did apply, it could be argued that Spellman's speeding and his risky evasive maneuver were aggravating factors, so that his conduct would still qualify as willful and wanton.

In Brown, the plaintiff was injured while fighting a fire on the defendant's premises. The defendant had failed to comply with a statute requiring proper sprinkler equipment. Nonetheless, the plaintiff's suit was barred by the fireman's rule; mere violation of the statute was not enough for liability because the plaintiff's harm was not the direct result of the violation. Brown, 552 A.2d at 1028-1031. Similarly, Spellman's violation of the speed limit was not the immediate cause of Casey's injuries, so it could not easily be argued that his speeding was willful and wanton. However, there remains a strong possibility that Spellman's second act, the sudden turn that was the proximate cause of Casey's injuries, could be found to be willful and wanton (i.e., reckless with regard to the possibility of injury).

To defeat summary judgment under this exception, we need only show that it is a triable issue of fact whether Spellman's act which proximately caused Casey's harm was willful and wanton. The possibility that he was intoxicated and the stronger possibility that he was aware of the risks involved in his acts of speeding and making a sharp turn are enough to send this case to a jury.

Instructor's Commentary

This is generally a pretty good memo. The mechanical parts at the beginning were pretty well done. The large and small scale organization was solid. The transitions from one sub-issue to the next were clear. The citation form was good, and the writing was clear.

The problems, such as they were, consisted primarily of small things missing here and there or some small analytical problems. As far as small missing pieces were concerned, the conclusion would have been slightly better if you had indicated what the "fireman's rule" was before you noted the exceptions. Also, in the thesis paragraph, it would have been slightly better to identify each of the exceptions, instead of just saying that there were three. Finally, when you used the Caroff case in the section on assumption of risk, it would have been more candid to indicate that it was not a "fireman's rule" case. In fact, because it was not, your analysis probably would have been better based on Chipps, though you could have noted Caroff with a signal and a parenthetical.

There were a number of subtle analytical points that you handled nicely. For example, on the issue using Alessio, it was effective to focus on extra risk. The point about extra risk is not only what the Alessio case focused on, but it is also relevant through Chipps, Cella, and dictum in Rosa. The one flaw in your approach, however, is that when you draw some of your analysis on the statement in Rosa that the officer would not have been barred if he had been in the store as a customer, you are treating the dictum as if it were holding. The reasoning would have been better and more complete if you had used the holding. Then you could have gone on to point out the argument that goes the other way and when you are describing that argument, you could reinforce some of your reasoning with the dictum from Rosa.

Throughout the memo you had clear case descriptions, which was a strength. In the subsequent act issue, it may have been better if you had used Wietecha, rather than Trainor, mainly because in Trainor, in contrast to Wietecha, neither the appellate court nor the supreme court was perfectly clear about what was the original act and what was the subsequent act. Although you did a pretty good job with the analogy to Trainor, the analysis was somewhat general. The analogy to McCarthy was clearer and more specific, because the case itself was more specific on what was the act occasioning the officer's presence and on what came later. The distinctions that were counter-arguments were ok, especially the part about moving vs. stopped. The distinction about drinking does not appear to be related to subsequent act. If you were thinking about something specific, it did not come through.

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The counter-argument in subsequent act was ok, but it would have been better if you had introduced it with a reason and not a case. For example, you could have noted that Spellman could argue that the risk of injury in a high speed chase is inherent in pursuing a speeding car. You could still use Rosa, but the reason you would be using it would be clearer to the reader. The quote from Berko on the top of page 9, though it is a good quote, is not really helpful to a reader, because the reader does not know what the Berko case is about. It would be better to describe and apply Berko to bring the quote in, or just to leave it out.

You seemed to have trouble resolving the counter-arguments on subsequent act. Given the holdings in the cases, it was too facile just to say that there is a jury question. The point would work better with the other two exceptions, where the courts did, in fact conclude that there was a jury question. But on the subsequent act issue, the court's decision on the applicability of the exception or not is strictly a matter of law for the court. Also do not use rhetorical questions, as you did to resolve the counter-arguments on this issue. Use topic sentences that tell the reader where you are coming out.

The willful and wanton issue was well done. You even used the holding in Mahoney correctly. The counter-arguments are ok here. Note that aside from raising cases as a counter-argument, Spellman may also simply argue that he wasn't driving that fast, given conditions.

Appendix E. Supplementary Tables

Table E1. Descriptive Statistics

Variable	N	Mean	S.D.	Min.	Max.
Score 1	237	3.47	1.60	1	6
Score 2	237	3.39	1.32	1	6
Score 3	236	3.53	1.45	1	6
Score 4	237	3.47	1.45	1	6
Score 2 + 4 Sum	237				
Total Score Sum	236	13.78	4.32	4	24
Questions Presented	237	5.96	1.44	2	10
Issue and key fact ident.	237	6.30	1.83	2	10
Legal expression and context	237	5.88	1.55	3	10
Brief Answer	237	5.98	1.18	3	10
Conciseness	237	6.19	1.55	2	10
Relationship to QP	237	6.59	1.38	2	10
Statement of Facts	237	6.39	1.03	3	10
Relevance of facts stated	237	6.83	1.26	3	10
Accuracy	237	6.72	1.06	4	10
Adequacy of detail	237	6.57	1.33	3	10
Objectivity	237	6.84	1.12	4	10
Discussion	237	6.06	.62	4	9
Issue and sub-issue descrip.	237	6.24	1.12	2	9
Research	237	6.35	.87	4	9
Authority selection	237	6.32	1.35	2	10
Authority description	237	5.81	1.52	2	10
Rule identification	237	6.07	1.24	2	10
Analysis	237	5.98	.98	2	9
Application of law to facts	237	5.92	1.57	2	9
Application of rationale	237	5.86	1.18	2	9
Use of key facts	237	6.16	1.43	2	10
Analogy and comp. of facts	237	5.62	1.64	2	9
Treatment of distinctions	237	5.61	1.35	2	9
Reasoning	237	5.90	.86	3	8
Support for statements	237	5.81	1.32	2	9
Completeness of explanation	237	5.41	1.47	2	10
Focus	237	5.83	.95	3	9
Conclusion	237	5.80	.84	3	9
Reasons	237	5.98	.93	4	9
Responsiveness to QP	237	6.25	.86	4	9
Comprehensiveness	237	5.75	.95	3	9

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Table E1, page 2 of 2

Variable	N	Mean	S.D.	Min.	Max
Writing	237	6.03	.49	4	8
Organization	237	6.00	1.18	3	9
Introductions	237	6.01	1.45	2	9
Transition, flow, etc.	237	5.73	1.50	2	9
Paragraphing	237	5.73	1.34	2	9
Use of headings	237	5.68	1.31	2	9
Style	237	6.13	.79	4	9
Clarity	237	5.90	1.44	2	9
Conciseness	237	5.78	1.21	2	9
Sentence control	237	5.73	1.37	2	9
Diction	237	5.70	1.28	2	9
Tone and attitude	237	5.99	1.17	2	9
Paraphrasing/quotations	237	5.84	1.06	2	9
Mechanics					
Citations (use and form)	237	5.35	1.55	2	10
Editing and proofreading	237	5.46	1.30	2	9
Grammar and usage	237	5.63	1.26	2	9
Punctuation	237	5.78	1.16	2	9
Spelling	237	6.19	1.16	2	9
Responsiveness to Assignment	237	6.40	.82	4	8

Table E2. Analysis of Two Sets of Instructor Ratings of samples from Institutions Other Than Their Own (237 cases)

	$FREQ_1$	r_1	$FREQ_2$	r_2	AVG FREQ	r_3
Questions Presented	48.5	.29	50.6	.30	49.6	.33
Issue and key fact identification	76.8	.34	86.1	.30	81.4	.38
Legal expression and context	57.4	.22	70.0	.27	63.7	.28
Brief Answer	29.1	.10	46.0	.38	37.6	.35
Conciseness	53.6	.13	67.5	.32	60.6	.28
Relationship to Questions Presented	52.7	.20	64.1	.26	58.4	.31
Statement of Facts	42.2	.28	38.4	.35	40.3	.30
Relevance of facts stated	57.8	.18	68.8	.21	63.3	.20
Accuracy	44.7	.17	52.7	.23	48.7	.24
Adequacy of detail	62.9	.13	65.0	.26	64.0	.24
Objectivity	48.5	.12	46.8	.14	47.6	.13
Discussion	9.3	.20	14.8	.29	12.0	.32
Issue and sub-issue description	31.2	.35	38.8	.42	35.0	.36
Research	33.3	.22	30.4	.40	31.8	.40
Authority selection and relevance	58.2	.44	47.3	.38	52.7	.51
Authority description and understanding	57.0	.56	60.3	.54	58.6	.59
Rule identification	31.6	.44	47.7	.39	39.6	.49
Analysis	27.4	.24	29.1	.40	28.2	.37
Application of law to facts	58.2	.60	67.9	.58	63.0	.66
Application of rationale	35.9	.45	38.8	.44	37.4	.51
Use of key facts	52.3	.52	56.1	.46	54.2	.58
Analogy and comparison of facts	60.3	.46	56.5	.45	58.4	.55
Treatment of distinctions	45.1	.37	44.7	.32	44.9	.37
Reasoning	22.8	.32	25.3	.42	24.0	.45
Support for statements	43.0	.49	48.1	.49	45.6	.53
Completeness of explanation	52.7	.51	56.1	.55	54.4	.57
Focus	21.9	.33	27.8	.42	24.8	.48
Conclusion	27.4	.21	27.0	.30	27.2	.29
Reasons	24.5	.31	33.3	.26	28.9	.24
Responsiveness to questions presented	27.0	.08	32.9	.25	30.0	.17
Comprehensiveness and thoroughness	25.3	.15	31.2	.27	28.2	.19
Recommendations for further action	--	--	16.5	.11		
Writing	11.4	.14	10.1	.23	10.8	.27
Organization	46.8	.40	32.9	.41	46.0	.54
Choice of organizational strategy	--	--	57.4	.47		
Introductions and thesis statements	53.2	.46	59.1	.49	56.1	.55
Transition, flow, and logical continuity	58.2	.56	65.4	.61	61.8	.66
Paragraphing	49.8	.34	44.3	.32	47.0	.38
Use of headings and sub-headings	38.4	.22	36.3	.13	32.7	.15
Style	23.2	.31	27.0	.35	25.1	.44
Clarity	52.3	.57	62.3	.59	57.3	.66
Avoidance of verbosity	42.6	.36	45.6	.32	44.1	.37
Sentence control	51.9	.45	48.1	.39	50.0	.45
Diction (word choice, precision)	48.1	.50	46.0	.35	47.0	.45
Tone and attitude	35.4	.34	43.9	.25	39.6	.33
Paraphrasing and use of quotations	29.1	.26	31.6	.22	30.3	.29
Mechanics	19.8	.17	28.3	.25	24.0	.29
Citations (use and form)	67.5	.30	70.5	.31	69.0	.32
Editing and proofreading	49.8	.24	52.7	.40	51.2	.38
Grammar and usage	49.8	.40	43.5	.50	46.6	.50
Punctuation	40.9	.30	44.7	.40	42.8	.40
Spelling	31.6	.23	35.6	.31	33.6	.27
Responsiveness to Assignment Directions	23.6	.27	33.3	.20	28.4	.23

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Table E2 continued:

Notes:

$FREQ_1$ The percentage of the first set of rating forms having a response (positive or negative) for a given taxonomy element.

$FREQ_2$ The percentage of the second set of rating forms having a response (positive or negative) for a given taxonomy element.

r_1 The correlation between the taxonomy element score for the first set of rating forms and Score 2.

r_2 The correlation between the taxonomy element score for the second set of rating forms and Score 4.

r_3 The correlation between the sum of the taxonomy element scores for the first and second set of rating forms and the sum of Score 2 and Score 4.

Table E3. Analysis of Sex Differences
(N = 229, 138 males and 91 females)

Variable	Males Mean	Males S.D.	Females Mean	Females S.D.	p
Score 1	3.31	1.58	3.60	1.60	.17
Score 2	3.29	1.33	3.50	1.30	.24
Score 3	3.34	1.48	3.71	1.37	.05
Score 4	3.39	1.44	3.57	1.46	.37
Score 2 + 4 Sum	6.68	2.29	7.06	2.32	.22
Total Score Sum	13.32	4.36	14.27	4.21	.10
Questions Presented					
Issue and key fact ident.	6.25	1.89	6.34	1.75	.71
Legal expression and context	5.81	1.62	5.90	1.47	.67
Brief Answer	5.87	1.25	6.14	1.05	.09
Conciseness	6.12	1.68	6.24	1.31	.55
Relationship to QP					
Statement of Facts	6.45	1.07	6.30	.98	.31
Relevance of facts stated	6.70	1.26	6.97	1.27	.12
Accuracy	6.59	1.12	6.90	.97	.03
Adequacy of detail	6.56	1.35	6.52	1.04	.79
Objectivity	6.80	1.11	6.89	1.17	.58
Discussion					
Issue and sub-issue descrip.	6.21	1.10	6.29	1.13	.62
Research	24.23	3.97	24.87	3.61	.22
Authority selection	6.18	1.42	6.43	1.23	.18
Authority description	5.76	1.53	5.84	1.49	.72
Rule identification	6.07	1.24	6.04	1.24	.86
Analysis	57.51	9.40	58.86	9.15	.28
Application of law to facts	5.71	1.52	6.20	1.59	.02
Application of rationale	5.85	1.18	5.91	1.20	.69
Use of key facts	6.09	1.48	6.38	1.33	.05
Analogy and comp. of facts	5.59	1.67	5.61	1.65	.90
Treatment of distinctions	5.56	1.38	5.65	1.34	.65
Reasoning	5.88	.90	5.93	.81	.67
Support for statements	5.75	1.34	5.89	1.31	.45
Completeness of explanation	5.41	1.56	5.41	1.31	.99
Focus	5.79	.95	5.86	.94	.60
Conclusion	5.74	.92	5.88	.73	.22
Reasons	5.99	.96	5.96	.92	.77
Responsiveness to QP	6.22	.85	6.29	.88	.60
Comprehensiveness	5.76	.98	5.77	.93	.95

Variable	Males Mean	Males S.D.	Females Mean	Females S.D.	p
Writing					
Organization	20.50	3.88	20.70	4.33	.72
Introductions	5.96	1.50	6.04	1.38	.66
Transition, flow, etc.	5.71	1.48	5.67	1.51	.84
Paragraphing	5.64	1.34	5.78	1.36	.46
Use of headings	5.72	1.25	5.56	1.38	.37
Style	23.32	3.56	23.66	3.66	.48
Clarity	5.90	1.45	5.87	1.45	.88
Conciseness	5.66	1.20	5.87	1.18	.20
Sentence control	5.67	1.35	5.77	1.35	.57
Diction	5.69	1.22	5.74	1.39	.78
Tone and attitude	5.83	1.12	6.19	1.17	.02
Paraphrasing/quotations	5.81	1.03	5.86	1.04	.74
Mechanics	11.16	1.98	11.64	2.12	.08
Citations (use and form)	5.17	1.59	5.57	1.49	.05
Editing and proofreading	5.30	1.26	5.65	1.31	.05
Grammar and usage	5.48	1.21	5.80	1.28	.05
Punctuation	5.68	1.14	5.84	1.13	.32
Spelling	6.14	1.08	6.25	1.23	.46
Selected Mechanics*	15.95	3.20	17.02	3.33	.01
Responsiveness to Assignment	6.37	.77	6.42	.91	.67

*Selected Mechanics was computed as the sum of Citations (use and form), Editing and proofreading, and Grammar and usage.

Table E4. Descriptive Statistics: Workbench Analyses
(N= 176)

Statistic	Variables*				
	KIN	AUT	CL	FLE1	FLE2
MEAN	11.33	11.11	11.22	12.64	48.23
S.D.	1.531	1.724	1.118	1.888	8.104
MINIMUM	7.900	7.100	9.000	8.600	26.20
MAXIMUM	16.30	17.20	13.70	17.00	64.30
	NOSNT	NOWDS	AVSLEN	AVWLEN	NOQST
MEAN	147.7	2.818E+03	19.32	4.857	3.176
S.D.	43.96	821.5	2.933	1.854E-01	3.968
MINIMUM	69.00	1.319E+03	11.50	4.510	0.000
MAXIMUM	259.0	4.803E+03	30.00	5.270	21.00
	NOIMP	NOCWDS	PCWDS	AVLENCW	SHTSENT
MEAN	3.068E-01	1.628E+03	58.14	6.172	14.32
S.D.	7.307E-01	448.2	3.078	2.889E-01	2.934
MINIMUM	0.000	802.0	50.50	5.650	7.000
MAXIMUM	6.000	2.715E+03	69.10	6.970	25.00
	PSHTS	NOSHTS	LNGS	PLNGS	NOLNGS
MEAN	35.80	52.55	29.32	16.18	23.48
S.D.	5.340	16.74	2.934	4.419	8.675
MINIMUM	18.00	23.00	22.00	6.000	9.000
MAXIMUM	49.00	94.00	40.00	28.00	47.00
	LGESTS	WHERE	SHTSTS	WHERE2	SMPLP
MEAN	69.48	60.91	2.068	42.81	45.36
S.D.	19.46	49.45	4.084E-01	25.19	10.22
MINIMUM	35.00	1.000	1.000	1.000	22.00
MAXIMUM	132.0	245.0	6.000	191.0	80.00
	SIMPNO	CPLEXP	PLEXNO	POUNDP	POUNDNO
MEAN	67.11	36.63	53.87	6.034	9.159
S.D.	24.91	8.072	18.74	2.890	5.488
MINIMUM	20.00	13.00	12.00	1.000	1.000
MAXIMUM	146.0	60.00	109.0	18.00	34.00
	CCP	CCNO	VERBT	TOBEP	TOBENO
MEAN	11.93	17.60	324.8	33.62	109.9
S.D.	5.082	8.951	106.9	6.620	42.11
MINIMUM	1.000	1.000	121.0	14.00	24.00
MAXIMUM	29.00	43.00	630.0	47.00	248.0
	AUXP	AUXNO	INFP	INFNO	PASSP
MEAN	20.74	66.94	16.50	53.60	15.66
S.D.	4.655	25.77	3.903	22.05	5.005
MINIMUM	8.000	17.00	8.000	14.00	1.000
MAXIMUM	33.00	165.0	33.00	147.0	29.00

Table E4 (continued):

	PASSNO	PREPP	PREPNO	CONJP	CONJNO
MEAN	42.59	10.83	304.4	2.568	73.25
S.D.	18.96	1.102	91.23	5.822E-01	28.47
MINIMUM	1.000	7.800	119.0	1.300	18.00
MAXIMUM	114.0	13.20	554.0	4.000	178.0

	ADVP	ADVNO	NOUNP	NOUNNO	ADJP
MEAN	4.144	121.1	28.59	798.5	15.87
S.D.	9.305E-01	55.24	2.059	214.8	2.840
MINIMUM	1.900	27.00	24.10	364.0	10.80
MAXIMUM	6.700	278.0	35.50	1.357E+03	25.60

	ADJNO	PRONP	PRONNO	NOMP	NOMNO
MEAN	438.1	3.316	95.06	3.000	81.92
S.D.	119.2	9.141E-01	44.55	8.751E-01	27.54
MINIMUM	195.0	1.300	24.00	1.000	35.00
MAXIMUM	783.0	6.400	292.0	5.000	172.0

	NOUNO	PRONOP	POSOP	ADJOP	ARTOP
MEAN	35.02	8.557	2.409	26.92	26.70
S.D.	14.57	6.191	2.566	10.29	12.29
MINIMUM	10.00	0.000	0.000	3.000	4.000
MAXIMUM	81.00	33.00	13.00	60.00	70.00

	TOTOP	BPREPP	BPREPNO	BADVP	BADVNO
MEAN	67.84	11.21	16.59	10.95	16.99
S.D.	8.026	4.138	8.034	6.372	11.93
MINIMUM	48.00	0.000	0.000	1.000	1.000
MAXIMUM	93.00	23.00	43.00	33.00	61.00

	BVERBP	BVERBNO	BSUBCP	BSUBCNO	BCONJP
MEAN	1.636	2.295	6.398	9.250	6.250E-01
S.D.	1.998	2.797	3.421	5.221	9.235E-01
MINIMUM	0.000	0.000	0.000	0.000	0.000
MAXIMUM	13.00	16.00	17.00	26.00	4.000

	BCONJNO	BEXPP	BEXPNO
MEAN	9.375E-01	1.392	2.063
S.D.	1.486	1.287	2.020
MINIMUM	0.000	0.000	0.000
MAXIMUM	7.000	8.000	10.00

*See next page for explanation of variable name abbreviations.

Table E4 (continued)

Variable Name Abbreviations

Abbreviation		Variable Description
1.	KIN	Kincaid readability grade
2.	AUTO	Auto readability grade
3.	CL	Coleman-Liau readability grade
4.	FLE1	Flesch readability grade
5.	FLE2	Flesch readability index
6.	NOSNT	Number of sentences
7.	NOWDS	Number of words
8.	AVSLEN	Average sentence length
9.	AVWLEN	Average word length
10.	NOQST	Number of questions
11.	NOIMP	Number of imperatives
12.	NOCWDS	Number of content words
13.	PCWDS	Percentage of content words (as percentage of total words)
14.	AVLENCW	Average length of content words
15.	SHTSENT	Short sentence word length
16.	PSHTS	Percentage of short sentences
17.	NOSHTS	Number of short sentences
18.	LNGS	Long sentence word length
19.	PLNGS	Percentage of long sentences
20.	NOLNGS	Number of long sentences
21.	LGESTS	Longest sentence (number of words)
22.	WHERE	Location of longest sentence (sentence number)
23.	SHTSTS	Shortest sentence (number of words)
24.	WHERE2	Location of shortest sentence (sentence number)
25.	SMPLP	Percentage of simple sentences
26.	SIMPNO	Number of simple sentences
27.	CPLEXP	Percentage of complex sentences
28.	PLEXNO	Number of complex sentences
29.	POUNDP	Percentage of compound sentences
30.	POUNDNO	Number of compound sentences
31.	CCP	Percentage of compound-complex sentences
32.	CCNO	Number of compound-complex sentences
33.	VERBT	Total number of verbs
34.	TOBEP	Percentage of "to be" verbs
35.	TOBENO	Number of "to be" verbs
36.	AUXP	Percentage of auxiliary verbs
37.	AUXNO	Number of auxiliary verbs
38.	INFP	Percentage of infinitive verbs
39.	INFNO	Number of infinitive verbs
40.	PASSP	Passive verbs as percent of non-infinitive verbs
41.	PASSNO	Number of passive verbs
42.	PREPP	Percentage of prepositions (as percent of total words)
43.	PREPNO	Number of prepositions
44.	CONJP	Percentage of conjunctions (as percent of total words)
45.	CONJNO	Number of conjunctions
46.	ADVP	Percentage of adverbs (as percent of total words)

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Table E4 (continued)

Abbreviation		Variable Description
47.	ADVNO	Number of adverbs
48.	NOUNP	Percentage of nouns (as percent of total words)
49.	NOUNNO	Number of nouns
50.	ADJP	Percentage of adjectives (as percent of total words)
51.	ADJNO	Number of adjectives
52.	PRONP	Percentage of pronouns (as percent of total words)
53.	PRONNO	Number of pronouns
54.	NOMP	Percentage of nominalizations (as percent of total words)
55.	NOMNO	Number of nominalizations
56.	NOUNO	Number of sentences beginning with nouns
57.	PRONOP	Number of sentences beginning with pronouns
58.	POSOP	Number of sentences beginning with possessives
59.	ADJOP	Number of sentences beginning with adjectives
60.	ARTOP	Number of sentences beginning with articles
61.	TOTOP	Percentage of sentences beginning with subject openings
62.	BPREPP	Percentage of sentences beginning with prepositions
63.	BPREPNO	Number of sentences beginning with prepositions
64.	BADVP	Percentage of sentences beginning with adverps
65.	BADVNO	Number of sentences beginning with adverbs
66.	BVERBP	Percentage of sentences beginning with verbs
67.	BVERBNO	Number of sentences beginning with verbs
68.	BSUBCP	Percentage of sentences beginning with subject-conjunctions
69.	BSUBCNO	Number of sentences beginning with subject-conjunctions
70.	BCONJP	Percentage of sentences beginning with conjunctions
71.	BCONJNO	Number of sentences beginning with conjunctions
72.	BEXPP	Percentage of sentences beginning with expletives
73.	BEXPNO	Number of sentences beginning with expletives

Table E5. Correlations Between Total Global Score and Workbench Variables (N = 175)

Variable	r	Variable	r	Variable	r
1. KIN	.05	26. SIMPNO	.10	51. ADJNO	.16
2. AUT	.09	27. CPLEXP	-.01	52. PRONP	-.06
3. CL	.06	28. PLEXNO	.12	53. PRONNO	.08
4. FLE1	.02	29. POUNDP	.11	54. NOMP	-.06
5. FLE2	-.02	30. POUNDNO	.14	55. NOMNO	.13
6. NOSNT	.14	31. CCP	-.01	56. NOUNO	.09
7. NOWDS	.19	32. CCNO	.07	57. PRONOP	-.01
8. AVSLEN	.07	33. VERBT	.12	58. POSOP	.04
9. AVWLEN	.05	34. TOBEP	-.05	59. ADJOP	.03
10. NOQST	-.04	35. TOBENO	.09	60. ARTOP	.17
11. NOIMP	-.03	36. AUXP	.13	61. TOTOP	-.10
12. NOCWDS	.18	37. AUXNO	.15	62. BPREPP	.12
13. PCWDS	-.10	38. INFP	-.01	63. BPREPNO	.17
14. AVLENCW	.09	39. INFNO	.08	64. BADVP	-.03
15. SHTSENT	.07	40. PASSP	-.04	65. BADVNO	.03
16. PSHTS	.00	41. PASSNO	.07	66. BVERBP	-.03
17. NOSHTS	.14	42. PREPP	.15	67. BVERBNO	-.01
18. LNGS	.07	43. PREPNO	.25	68. BSUBCP	.09
19. PLNGS	.06	44. CONJP	.12	69. BSUBCNO	.20
20. NOLNGS	.16	45. CONJNO	.19	70. BCONJP	.05
21. LGESTS	.01	46. ADVP	.02	71. BCONJNO	.01
22. WHERE	.15	47. ADVNO	.10	72. BEXPP	-.09
23. SHTSTS	-.06	48. NOUNP	.05	73. BEXPNO	-.03
24. WHERE2	.03	49. NOUNNO	.22		
25. SMPLP	-.02	50. ADJP	-.10		

Note: See Table E4 for variable descriptions.

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